(21,821 and 21,837.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 595.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI, APPELLANTS,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

FILED SEPTEMBER 13, 1909.

No. 611.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLANT,

vs.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI, ET AL.

FILED SEPTEMBER 22, 1909.

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1 UNITED STATES OF AMERICA, *sct:*

Be it remembered, that heretofore, to wit, on the 16th day of June, A. D. 1905, a bill of complaint was filed in the office of the clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in the case wherein Chicago, Burlington & Quincy Railroad Company is complainant and John A. Knott et al. are defendants.

Said Bill of Complaint is in words and figures as follows:

UNITED STATES OF AMERICA,
Western District of Missouri, Western Division, ss:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
v.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court aforesaid:

Your orator, Chicago, Burlington & Quincy Railway Company, brings this, its bill of complaint, against each of the above-named defendants, and thereupon avers:

I.

Your orator, Chicago, Burlington & Quincy Railway Company, is a railway corporation organized and existing under the laws of the State of Iowa, with its chief office therein and a citizen and resident thereof, being authorized to do business in the State of Missouri. It is, with its railroad, engaged in state and inter-
2 state commerce, maintaining and operating lines of railway in Missouri and other states. Of the said lines, the following are, and have for a long time been, maintained and operated by your orator in the State of Missouri:

(*a*) A railroad extending from the city of St. Louis, Missouri, northerly to the north line of the State of Missouri, a distance of about 171.26 miles, commonly known as the St. Louis, Keokuk and Northwestern Railroad with (1) a branch to Franklin Avenue Station in St. Louis, 1.29 miles in length and (2) a branch from Cuivre Junction to St. Peters, 10.60 miles in length, (3) a branch from West Quincy to the center of the main channel of the Mississippi river, .79 miles in length.

(*b*) A railroad extending from Hannibal, Missouri, westerly to St. Joseph in said state, a distance of about 206.52 miles, commonly known as the Hannibal and St. Joseph Railroad, with branches as follows: (1) from Palmyra Junction to Moody, 8.58 miles in length; (2) Cameron to Harlem, 52.52 miles in length.

(*c*) A railroad extending from Kansas City, Missouri, northerly to the north boundary line of the State of Missouri, a distance of about 141.20 miles, commonly known as the Kansas City, St. Joseph and Council Bluffs Railroad, with branches as follows: (1) Bigelow, Missouri, to the north line of the State of Missouri, 41.28 miles; (2) Corning, Missouri, to the north line of Missouri, 25.44 miles; (3) Armour, Missouri, to the middle of the Missouri river, 3.90 miles; (4) East Leavenworth, Missouri, to the middle of the Missouri river, 2.06 miles; (5) Napier to the middle of the Missouri river, 8.95 miles.

(*d*) A railroad extending from St. Joseph, Missouri, northerly to the north line of the State of Missouri near Hopkins, Missouri, a distance of about 62.67 miles.

(*e*) A railroad extending from St. Joseph, Missouri, northeasterly to the north line of the State of Missouri, a distance of about 78.02 miles, with a branch from Albany Junction, Missouri, northwesterly to the north line of Missouri, 26.59 miles in length.

3 (*f*) A railroad extending from the north line of the State of Missouri southerly to Cainsville, Missouri, a distance of about 11.88 miles.

(*g*) A railroad extending from Alexandria, Missouri, westerly to a point in Lancaster County, Missouri, on the north boundary line of Missouri, a distance of about 69.62 miles, being that portion of the road commonly known as the Keokuk & Western Railroad, lying in the State of Missouri.

(*h*) A railroad extending from the north line of the State of Missouri in a southwesterly direction to Carrolton, Missouri, a distance of about 103.81 miles, being the Missouri portion of the road commonly known as the Chicago, Burlington & Kansas City Railway.

(*i*) A railroad extending from Old Monroe, Missouri, northwesterly to a connection with the Chicago and Alton Railway, near Mexico, a distance of about 65.3 miles.

The total mileage maintained and operated by your orator in the State of Missouri, as aforesaid, amounts to about 1,100 miles.

II.

This cause arises under the constitution and laws of the United States, for that it seeks to enjoin the enforcement and adoption as against your orator of the provisions, requirements and prohibitions in the act of the legislature of Missouri mentioned in paragraph VII hereof (hereinafter called the Act of 1905) and certain other laws of Missouri hereinafter mentioned; said acts being unconstitutional, violative of the provisions of the constitution of the United States and the amendments thereto, and contrary to the constitution and laws of the United States, all as hereinafter more particularly stated.

The matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

III.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, constitute the duly elected, qualified and acting board of railroad commissioners of the State of Missouri, and are citizens and residents respectively of Marion County, City of St. Louis, and Barry County, therein, their statutory official residence being in Cole County therein. The defendant, Herbert S. Hadley is the duly elected, qualified and acting attorney-general of the State of Missouri, and is a citizen and resident of Cole County therein. Each of said parties is, by the law of which the act of 1905 is a part, required to do and perform the special duties hereinafter mentioned.

IV.

Defendants Charles M. Daily, William F. Davis and James F. Robb, each of whom is a citizen and resident respectively of the counties of Andrew, Buchanan and Jackson, Missouri, are herein designated as shippers, each being a person engaged in shipping over your orator's road and other roads in the state to and from points therein the commodities, the rates of which are attempted to be limited by the said act of 1905. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all, and the above named defendants are made parties hereto for the purpose of determining the rights as against your orator of all shippers under the said act of 1905.

V.

Article 4, Chapter 12, of the Revised Statutes of Missouri, 1899, of which the Act of 1905 has become a part, made provision for the classification of railroads and freights and provision for maximum rates. Sections 1191, 1192 and 1193 thereof provide as follows:

SEC. 1191. Roads classified.—All railroads in the State of Missouri are hereby divided into three classes, to be known as class A, class B and class C. Class A shall include all through or trunk line railroads. Class B shall include all of the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroads owned, leased or occupied, or which may hereafter be owned, leased or occupied in this state, either wholly or in part.

SEC. 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In class A not exceeding three cents per mile, and in classes B and C not exceeding four cents per mile: Provided, that

no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and, provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SEC. 1193. Freight classified.—All freights, hereafter transported upon any railroad or part of a railroad in this state are hereby divided into four general classes, to be designated as first, second, third and fourth classes, and into seven special classes, to be designated as classes, D, E, F, G, H, I and J. Class D shall comprise all grain in car loads. Class E shall comprise flour in lots of fifty barrels or more, and lime in lots of twenty-four barrels or more. Class F shall comprise sale in lots of sixty barrels or more, and cement, water-lime and stucco in lots of twenty-four barrels or more. Class G shall comprise lumber, lath and shingles in car loads. Class H shall comprise live stock in car loads. Class I shall comprise agricultural implements, furniture and wagons. Class J shall comprise coal, brick, sand, stone, railroad ties and cord wood and all heavy fourth-class articles in car loads; and in addition to the several articles in the said special classes shall be added other articles as and in the manner hereinafter prescribed, except in classes, D. E. G and H, and all articles not before enumerated or subsequently set into said classes as hereinafter provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners hereinafter to be provided."

SECTION 1194 fixed the maximum rates for the seven special classes of freight designated as classes D, E, F, G, H, I and J, respectively. The statutes of the state also provide for the
6 election and qualification of the railroad commissioners aforesaid, and prescribe their special duties, among which special duties in relation to the adoption and enforcement of the said Act of 1905 are these: To require to be posted by each railroad company in the state in its depot or railroad station and to be filed in the office of the railroad commissioners a schedule of rates to be charged, which shall be the only schedule of rates lawfully charged and collected by said railroad company, and which in no event must exceed the maximum rates at any time fixed by law, nor those maximum rates fixed by the Act of 1905; to require to be likewise filed and published all joint tariff arrangements with other common carriers; to see that all such schedules of rates are observed by all common carriers; if and when the common carrier shall neglect or refuse for thirty days to file or publish its schedule as aforesaid as commissioners to make out and print such schedule for such carrier, delivering to it a copy thereof, which shall be likewise posted in the depots and stations; to enforce statutory provisions imposing severe penalties for a failure to publish and file said schedule; to hear all complaints made by any person for a violation of any of said provisions of law, as well as to institute on its own motion any such complaint. The statutes of the state also especially provide for the adoption and enforcement of the provisions of the Act of 1905 by requiring the prosecuting attorney of each county to

prosecute any carrier violating the provisions of the law aforesaid whenever directed by the railroad commissioners, receiving for his services compensation equal to the amount allowed by law on forfeited recognizances, and the attorney general is required to assist in such prosecution and to prosecute other cases whenever directed by the railroad commissioners.

VI.

The legislature of the State of Missouri in 1903 passed an act herein called the Act of 1903, reading as follows:

SECTION 1. That chapter 12 of article 4 of the Revised Statutes of Missouri of 1899 be and the same is hereby amended by adding thereto two new sections, to be between sections 1194 and
7 1195 of said chapter, to be known as section- 1194*a* and 1194*b*, providing for the fixing, modifying and enforcing freight rates as follows:

SECTION 1194*a*. The board of railroad and warehouse commissioners are hereby authorized, empowered and required to fix, maintain and establish just and reasonable freight rates on all classes of freight from, to and between all points and stations upon and along all lines of railroads in this state; and said board is authorized and empowered to reduce, change or modify any and all such freight rates so fixed and established as hereinafter provided. And said board may, of its own motion, and shall, upon the sworn complaint of any shipper, mayor, councilman, alderman or trustee of any city, town or village, first giving five days' written notice to the railroad company affected, or complained against, proceed to fix, establish, modify or reduce the freight rates or charges of any such road from, to or between any and all points or stations in Missouri; and any and all orders fixing, establishing, modifying or reducing any such freight rates or charges shall be the judgment of said board and constitute the legal rates or charges that such railroad company may collect for the transportation of freight from, to and between its stations in Missouri; and said board shall, immediately upon the fixing, establishing, modifying or reducing the freight rates or charges of any railroad company, notify such railroad in writing thereof; and said railroad company shall comply with the orders and judgments of said board with reference to such freight rates or charges within ten days after such notice. And if any railroad fails, refuses or neglects to put the rates so ordered by said board into effect and operation within ten days after notice the board shall submit a certified copy of its order to the attorney general of the state with notice that such railroad (designating the same), has failed to comply therewith. And the attorney general, upon receipt thereof, shall immediately institute suit in the name of said board of railroad and warehouse commissioners against such railroad in the supreme court of the state, by mandamus or other proper remedy, to enforce said order of said board.

8 SECTION 1194*b*. All railroad companies doing business in this state shall, upon the request of the board of railroad and warehouse commissioners, furnish to said board copies of all its

schedules of freight rates and charges, and all other papers and documents, including bills of lading and contracts for transportation of freight affecting in any way the transportation of freight within, into and from this state. And said board shall have full power and authority to examine all officers, agents and employés of said railroad companies, and all other persons, under oath or otherwise, to procure the necessary information to make just and reasonable freight rates or charges, and to ascertain if the freight rates so fixed by said board are being observed or violated. And said board shall have power to administer oaths, to issue subpœnas for persons and papers, examine witnesses and to enforce the same in like manner as the circuit courts of this state. And in the issuance and enforcement of the papers and process above the jurisdiction shall be co-extensive with the state."

There were then and there adopted sections 1194- and 1194*b* to become part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, to be known as sections 1194*a* and 1194*b*, and to be inserted between sections 1194 and 1195 of the said Revised Statutes.

VII.

The legislature of the State of Missouri, at its session of 1905, passed the act herein called the Act of 1905, reading as follows:

SECTION 1. That section 1194 of the Revised Statutes of Missouri, 1899, concerning the regulation of freight charges being part of article IV, of chapter 12, entitled "Corporations, private," be and the same is hereby repealed and the following, to be known as sections 1194, 1194*a*, 1194*b*, of said Revised Statutes, be enacted in lieu thereof, so that said sections shall be collocated between the existing sections 1193 and 1195 of said Revised Statutes of 1899.

9 SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad, designated in section 1191 as in classes A, B, or C shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds, minimum weight, not exceeding five cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class E, in car loads of 24,000 pounds, minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class F in car loads of 30,000 pounds, minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class G, in car loads of 30,000 pounds, minimum

weight not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class H, in car loads in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $6.00 per car load for the first 25 miles, and not exceeding $3.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof, of over twelve miles. For the carriage of any of the articles comprising class H in cars of other lengths for the distance above specified the following percentages of the foregoing rates per car
10 load shall not be exceeded, namely: In cars of lengths less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All of the foregoing lengths to be taken by inside measurements. Class I, in car loads of 20,000 pounds, minimum weight, not exceeding $14.00 per car load for the first 25 miles and not exceeding $2.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof. In computing the rate of freight according to the provisions of this article the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. That for the violation of the foregoing section the railroad company so offending shall forfeit and pay to any person thereby affected the freight rate charged, demanded or received in excess of the rates prescribed in said section, together with all actual damages caused thereby, to be recovered in any court having jurisdiction thereof by the existing law. And (if) plaintiff in such action recover judgment therein the court shall treble the same and the plaintiff shall, on motion, be allowed a reasonable attorney's fee for bringing the action.

SECTION 1194*b*. All acts and parts of acts and all rules and regulations, freight schedules, classifications and groupings by railroad companies or the railroad and warehouse commissioners of this state in conflict with the provisions of this act are hereby repealed and declared void.

11 Approved April 15, 1905.

Said act will, under the constitution and laws of the State

of Missouri, take effect on the 16th day of June, 1905, which will be ninety days after the adjournment of the session of the legislature at which the act was passed. The rates now being lawfully charged by your orator for the transportation of freight of the character mentioned in the said act are shown in schedules now on file with the railroad commissioners and posted in your orator's depots and railroad stations, and are in excess of the maximum rates fixed in said act of 1905, so that when said act becomes effective, if permitted to be enforced, it will require such a reduction in your orator's said rates as to make imperative a change in the said schedule, which change your orator does not propose to make, and cannot make without jeopardizing its property interests. The railroad commissioners propose and threaten to, and will, unless enjoined herein, enforce the special provisions of the statute of the state for the enforcement of said Act of 1905 by entering upon investigations, both upon its own instigation and upon the complaint of shippers, and by determining and adjudging your orator's present schedule of rates posted and filed as aforesaid to be unreasonable, unjust and extortionate for the sole reason that the said rates are unauthorized by the said Act of 1905 and by requiring under the pain of large penalties, threatened to be enforced, your orator to file and publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905. Besides which, said railroad commissioners propose, as specially required by law, to file, post and publish as your orator's said schedule the maximum rates fixed in said act, if and when your orator refuses so to do, and they propose to direct each of the prosecuting attorneys in each of the counties through which the line of your orator runs to prosecute and recover of your orator the large and excessive penalties provided by law, and to direct the defendant the attorney general, to assist in such prosecutions, and to direct the defendant attorney general to prosecute your orator and re-
12 cover the penalties provided by law for its failure to comply with the orders which the railroad commissioners propose from time to time to make in investigations instituted for the enforcement of the said Act of 1905 by compelling your orator to adopt rates in accordance therewith. Said prosecuting attorneys and attorney general will conduct said prosecutions and seek to recover said penalties.

The shippers along the line of your orator's railroad are very numerous and are daily engaged in making and receiving shipments to and from points in Missouri of freight of the special classes designated in the Act of 1905, so that unless restrained by this court there will be instituted by them a multitude of suits to recover of your orator treble damages sustained, together with attorney's fees in each case. Said parties are so numerous, and the causes of action which will accrue so many, if the Act of 1905 be enforced, that it is not practicable to make more than part of said shippers defendants thereto, but all other shippers in the counties in the state where your orator's lines of road extend are likewise interested with those named as defendants herein, so that such as are named as such defendants should defend for all those having like interest, any such omitted

party being permitted to become a defendant herein if so desired, to the end *end* that all persons having a like interest will be bound by the decree to be entered herein, and the court have an opportunity to determine once for all the validity of said Act of 1905.

VIII.

The said Act of 1905 is unconstitutional and inoperative and of no force or effect for each of the following reasons:

(*a*) It prescribes rates unreasonable in amount which, if enforced, will confiscate the property of your orator, require it to carry the commodities specified therein, and each of them, and to conduct its entire freight and other local traffic in the State of Missouri, not only without profit or reward, but for a sum which will not pay the actual operating expenses necessarily incurred in performing said service, all of which is contrary to and violative of the provisions of the constitution of the United States, and particularly of
13 the fourteenth amendment thereto, prohibiting the taking of property without due process of law, and guaranteeing to all persons the equal protection of the laws.

(*b*) It is discriminatory, as alleged in paragraphs X and XI hereof, whereby it is violative of said amendment to the constitution of the United States.

(*c*) It provides that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another. This impairs your orator's freedom of contract and fixes a rate for it based upon carriage over the line of another road whereby the provisions of the federal constitution and the amendments thereto hereinbefore referred to are violated, and the freedom of contract, guaranteed by section 4, article 2 of the state constitution, denied.

(*d*) It attempts to adopt and create as part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, two sections called sections 1194*a* and 1194*b*, when the Act of 1903 adopted sections so numbered as part of the same article and chapter. There was by the Act of 1905 no repeal or attempted repeal of said Act of 1903. The Act of 1905 cannot be treated as amendatory to the Act of 1903 because it is insufficient since it does not in anywise comply with the provisions of section 34, article 4, of the constitution of the state, providing as follows:

SECTION 34. Act amended, how.—No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

The act is therefore invalid because the law as it now stands is uncertain, there being two separate enactments upon two different subjects designated as sections 1194*a* and 1194*b* of article 4 of chapter 12 of the Revised Statutes of 1899.

(e) It provides in section 1194 that no individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad designated in section 1191 as in clas-es A, B, or C shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes therein designated than as therein provided for, but it also provides in section 1194*a* that the penalty for a violation of the act shall be enforced only against railroad companies, thereby exempting individuals from such penalties. This is a discrimination between individuals and companies, and denies to your orator the equal protection of the laws guaranteed it by the fourteenth amendment to the Constitution of the United States.

IX.

Your orator operates a system of railroads extending into and through Missouri and other states, and comprising about eighty-eight hundred (8,800) miles of road, which are operated together as continuous lines and as through routes for the transportation of freight and passengers.

Your orator at present and for many years past has only been able to carry on its local business in the State of Missouri without bankruptcy because of its earnings from interstate business, and it is advised that under the law the reasonableness of rates prescribed by a state for transportation between points within its boundaries must be determined solely without reference to its interstate business or the earnings therefrom.

The present schedule of rates published, charged and maintained by your orator for the transportation of property between points on its said lines in the State of Missouri is lawful, just and reasonable to the public, has been in effect under the sanction of or as prescribed by the railroad commissioners in performing their duty under the law to require all carriers subject to their jurisdiction to charge, publish and collect reasonable and just rates and fares, and has been adjusted with reference to the business and commer-
15 cial necessities of the people of Missouri, so that all of said commodities shall and do move freely over the lines of your orator, and the freight of different kinds has been classified for many years as reasonably required by the difference in the cost of transportation, size, value and other circumstances bearing thereon.

Your orator further shows that its present rates on all commodities locally transported between points in said state are not now nor have they for many years past been remunerative to not afforded your orator a fair and reasonable return for its services in that behalf and upon the value of its property employed therein. The cost of doing the business local to the State of Missouri is at least three times the average cost and expenses of transporting its entire traffic within the state. Local traffic is usually handled upon local trains, which receive and deliver freight at each station, so that they do not have a full train load for any part of the journey. Additional fuel and time are consumed in switching, and for other obvious reasons the cost of handling the local traffic

where the average haul is short is much greater for the through business which is done in train loads and with greater economy in other respects. The receipts from the local business are little in excess of the average receipts for the transportation of all its traffic, so that said local business is now performed at an actual loss, yet *some* your orator will now be compelled to so reduce its rates upon the articles and commodities embraced in said act as therein required as to lose a further very large sum, computed at $173,770.44 or 32.22 per cent upon the actual receipts of your orator for the transportation of the commodities covered by the said act for the calendar year 1904, in case said act had been in effect during said year.

If, for the classes of freight mentioned in said act of 1905, charges should be made by your orator at the maximum rates therein fixed for state shipments, it would be required to carry said classes of freight and each article of freight therein specified, not only without profit, but at a loss. Said rates, considered either separately, as a whole, or in connection with the entire traffic of your orator in said State of Missouri, are unjust, unreasonably low and confiscatory in their nature.

16 Your orator submits that while it may voluntarily propose to carry a commodity or commodities for less than cost and a fair profit, yet the legislature cannot compel it to do so, which will be the effect of the said Act of 1905.

The proposed reduction in the rates upon the commodities embraced by the said act will not increase the volume of traffic, nor the earnings therefrom, but will, in the future, diminish the earnings from business local to the State of Missouri to the full extent stated for the year 1904, or even in a greater degree upon a lessened volume of traffic which it is reasonable to anticipate will occur at any time.

Your orator further shows that the provision in said Act of 1905 that in computing the distance upon which said maximum rates shall be based the whole distance over which a shipment is transported in the state shall be considered, notwithstanding it may be over the roads of several companies, is invalid in that such provision will operate to reduce rates upon through shipments so that they are still more unreasonable, confiscatory and unjust than in the case of a shipment between points upon a single railroad; said provision makes a reduction in rates upon interline shipments that is arbitrary, discriminatory, and not based upon any just difference in the cost to the carriers or other circumstances; requires the carriers concerned in a through shipment to enter into involuntary contractual relations in respect to such shipment and the division of the through rate, and does not fix any method for ascertaining the proportion of the through rate that each carrier shall receive, so that said provision is too vague and uncertain to be enforced; wherefore it, as the whole of the said Act of 1905, is in conflict with the constitutional provisions hereinbefore mentioned.

X.

There are in this state carrying therein the classes of freight mentioned in said act, and hence affected thereby, the following companies owning or operating lines of railroad:

17 Missouri Pacific Railway Company; Wabash Railroad Company; St. Louis and San Francisco Railroad Company; St. Louis, Iron Mountain and Southern Railway Company; Missouri, Kansas and Texas Railway Company; St. Joseph and Grand Island Railway Company; Chicago, Rock Island and Pacific Railway Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago and Alton Railway Company; St. Louis Southwestern Railway Company; Kansas City Southern Railway Company; Atchison, Topeka and Santa Fe Railway Company; Quincy, Omaha and Kansas City Railroad Company; St. Louis and Hannibal Railway Company, and others, each and all of said companies claims that the maximum rates fixed by said Act of 1905 are confiscatory in their nature, and if charged would result in said company doing its state business without any profit, which, as a fact, is true. Each of said companies has filed or will at once file a bill similar to that now presented by your orator. Even if in this cause it should be held that such maximum rates should be valid as against your orator, yet, as a matter of fact, same are unreasonably low as against each of said other companies, and will not permit either of said companies to make a profit upon its state business, and therefore said act is invalid as against said company. This being true, the act, even if held valid as to your orator, is unconstitutional, because it would thereby become discriminatory in that it would not apply alike to all persons or corporations operating railroads in this state, whereby the provisions of the Constitution of the United States, and the amendments thereto hereinbefore mentioned are violated.

XI.

Said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable and unconstitutional in this: The cost of transporting live stock is greater than that of any other commodities in which a reduction is made, yet said act fixes the rate thereon much less than on salt, cement, lumber, lath and shingles. The different articles transported on your orator's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic and other circumstances well understood, and have remained in substantially the same classes for many years.

18 which has been recognized, approved and enacted into law by the statutory classification in effect in Missouri since 1893, and as required by its railroad commission. The unequal, partial, arbitrary reduction in rates upon articles affected by said Act of 1905 as compared with other commodities and between the different commodities themselves included in said act not only works an injustice between the shippers, producers, manufacturers of the State of Missouri and deprives them of their property without due process of law and denies them the equal protection of the laws, but

likewise operates to deprive your orator of its property without due process of law, and denies it the equal protection of the laws in that the legislature, having established maximum rates of charges for the transportation of all kinds of property, which are presumably fair and reasonable, now attempts to further regulate the affairs of your orator and to require it to discriminate in favor of certain persons and shippers and to give them a right of transportation for a less rate than the general rate heretofore fixed by law or than is just and reasonable in view of the cost to the carrier or the value of the service rendered to the shipper.

In consideration whereof, and forasmuch as your orator is remediless in the premises, and by the strict rules of the common law can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, your orator prays: First, that the said act of the legislature of Missouri set forth in paragraph VII of this bill, and for convenience called the Act of 1905, be declared unconstitutional, unenforcible and not binding upon your orator. Second, that the defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, as railroad commissioners of the State of Missouri, their successors in office, agents and servants, be temporarily and permanently enjoined and restrained from taking any step to put in force the maximum rates mentioned in said Act of 1905; from requiring your orator to post same at any place or file same with them; from receiving a schedule thereof to be filed with them; from taking or making out, or printing or deliver-
any schedule of rates for your orator containing the maxi-
19 mum rates fixed by said act; from instituting or permitting
any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said Act of 1905; from directing the attorney general of the state or any prosecuting or other attorney therein to prosecute or assists in prosecuting your orator, directly or indirectly, for any failure to file the schedule adopting the said maximum rates, or for any failure to recognize, adopt or comply with said Act of 1905. Third, that Defendant Herbert S. Hadley, as attorney general, and all other prosecuting attorneys in the same class and affected by this bill, be temporarily and permanently enjoined and restrained from prosecuting or assisting in the prosecution of any suit or action against your orator to enforce against it in any action, directly or indirectly, any penalty in any wise dependent or based upon the failure of your orator to recognize and abide by the said Act of 1905. Fourth, that the defendants, Charles M. Daily, William F. Davis and James F. Robb, and all other shippers affected by this proceeding be temporarily and permanently enjoined and restrained from instituting any action under or taking any steps to collect any penalties or damages for the alleged violation of said Act of 1905. Fifth, that your orator have such other and further relief as may be just and equitable.

And may it please Your Honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the said John A.

Knott, Joseph P. Rice and Frank A. Wightmen, railroad commissioners of Missouri; Herbert S. Hadley, attorney general of the State of Missouri; Charles M. Daily, William F. Davis and James F. Robb, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this Honorable Court, then and there answer, but not under oath (such oath being expressly waived), all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises, and that pending the final hearing of this cause a temporary restraining order may issue enjoining said defendants and each of them as prayed herein.

And your orator will ever pray, etc.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY,
By GEO. H. CROSBY,
Its Freight Traffic Manager.

E. M. SHELTON,
FRANK HAGERMAN, AND
O. M. SPENCER,
Solicitors for Complainant.
J. W. BLYTHE,
Of Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

I, Geo. H. Crosby, upon oath, say I am freight traffic manager of complainant in above entitled bill, and as such officer have charge of the traffic operations of said company and of matters and things mentioned in said bill, which I have read. I know the contents thereof, and the same are true of my knowledge, except as to matters therein stated upon information and belief, and as to those matters I believe them to be true.

GEO. H. CROSBY.

Subscribed and sworn to before me this — day of June, 1905.
My commission expires March 3rd, 1906.

[SEAL.] J. H. PETTIBONE,
Notary Public.

Thereupon upon said 16th day of June, 1905, a Restraining Order was filed and entered of record. Said Order is in words and figures as follows:

21 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

Restraining Order.

The original bill of complaint having been this June 16, 1905, by the solicitors for complainant duly presented, and the court being fully advised in the premises, orders and decrees: Complainant's application for temporary injunction herein is set down for hearing at the United States Circuit Court room in Kansas City, Missouri, on June 26, 1905, at 10 o'clock a. m., or as soon thereafter as it is convenient for the court to hear the same.

In the meantime, and until the further order of court herein, each and all of the above named defendant railroad commissioners, their agents, servants and successors, are restrained from taking any steps to put in force the maximum rates mentioned in the act of the legislature of the State of Missouri, approved April 15, 1905, and entitled "An Act, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof;" from requiring complainant to post said maximum rates at any

22 place, or to file same with them; from requiring a schedule thereof to be filed with them; from taking or making out, or printing, or delivering any schedule of rates for complainant containing the maximum rates fixed by said act; from instituting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said act; from directing the attorney general of the state, or any prosecuting attorney therein to prosecute or assist in prosecuting complainant directly or indirectly for any failure to file a schedule adopting said maximum rates; or for any failure to recognize, adopt or comply with said act.

And in the meantime, and until the further order of court herein, the above named attorney general and his assistants and successors are restrained from bringing any suit or action against complainant to enforce against it, directly or indirectly, any penalty in anywise dependent or based upon the failure of complainant to recognize or abide by the said act of the legislature.

And in the meantime and until the further order of court herein, the defendants John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, and all other shippers affected by this proceeding, are restrained from instituting any action, or taking any steps to collect any penalties for the alleged violation of said act of 1905.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 27th day of June, 1905, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

23

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY AND COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

24 **No. 3001.**

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY,
Complainant,
vs.
SAME, Defendants.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY,
Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Order.

The applications of complainants in above cases for temporary injunction coming on for hearing, this June 27th, 1905, complainants appearing by Frank Hagerman, their solicitor, and the Attorney General in person. At the request of the latter it is ordered that the said application be continued till July 8, 1905,—and until further order of court the restraining orders heretofore issued shall continue in force.

(Signed) JNO. F. PHILIPS,
(Signed) SMITH McPHERSON,
Judges.

Afterwards, to wit, on the 8th day of July, 1905, the following Entry of Appearance was filed; said appearance being written on a copy of the restraining order entered on the 16th day of June, 1905.

Received copy of foregoing restraining order this — day of June, 1905, and the undersigned defendants enter their appearances in

said case as of the August, 1905, rules and authorize the Att'y General of the State of Mo. to represent me in said cause.

CHARLES M. DAILY.
W. F. DAVIS.

25 I hereby acknowledge receipt of a copy of the foregoing restraining order this 26th day of June, 1905, and hereby enter my appearance in said case as of the August, 1905, rules, and authorize the Attorney General of the State of Missouri to represent me in said cause, all done upon the condition, and with the understanding, that I am in no way to be held liable for any costs incurred or attorney's fee, by reason of this acknowledgement and entry of appearance.

JAMES S. KOBB,
Improperly Named in said Order as James F. Robb.

Afterwards, to wit, on the 12th day of July, 1905, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. KNOTT, and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Order.

This cause came on for hearing this 12 day of July, 1905, upon complainant's application for temporary injunction. The complainant, the attorney general and the defendant railroad commissioners appeared by counsel; the other defendants having been notified of the hearing; and the court being fully advised in the premises, orders, and adjudges:

1. The restraining order heretofore issued herein shall continue and remain in force as a temporary injunction.

2. The complainant shall, on or before the 25th day of July, 1905, file herein an injunction bond in the sum of Ten Thousand dollars, to be approved by a judge or a clerk of this court, the 26 defendants consenting to accept the individual bond of the complainant, conditioned to pay, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them or any person becoming a defendant herein.

(Signed) JNO. F. PHILIPS, *Judge.*

Afterwards, to wit, on the 22nd day of July, 1905, an Injunction bond was filed. Said bond is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General; JOSEPH P. RICE, JOHN A. Knott, and Frank A. Wightman, Railroad Commissioners, et al., Defendants.

Injunction Bond.

Know all Men by These Presents, That the above complainant is held and firmly bound to above named defendants in the penal sum of Ten thousand dollars ($10,000) well and truly to be paid in lawful money of the United States, for the payment of which it binds itself, its executors, administrators, successors and assigns.

This bond is made upon these conditions:

Whereas, the Court in above entitled cause made an order on July 12, 1905, granting a temporary injunction,

Now if said obligor pays, in case said injunction be dissolved, all damages ascertained herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein, then this obligation to be void; otherwise in force and effect.

Witness the hand and seal of said party this July —, 1905.

27 CHICAGO, BURLINGTON & QUINCY RAILWAY CO.,
[SEAL.] By GEO. B. HARRIS, *Its President.*

Attest:

H. W. WEISS,
Ass't Secretary.

The foregoing bond is approved this 22 day of July, 1905, the appearing defendants waiving the necessity of any surety signing the bond.

ADELAIDE UTTER, *Clerk.*

Afterwards, to wit, on the 7th day of August, 1905, the Demurrer of Herbert S. Hadley, Attorney General was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

The Demurrer of Herbert S. Hadley, Attorney General of the State of Missouri, one of the Above-named Defendants, to the Bill of Complaint of the Chicago, Burlington and Quincy Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill and for causes of demurrer shows:

28 1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its entire intrastate traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity, on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said Act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole,

would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

4. That said bill of complaint is deficient for want of certainty in its averments, in this, that it fails to show the amount of the complainant's gross annual income from the operation of its lines of railroad in the State of Missouri, in transporting intrastate traffic, or the amount of its operating and maintenance expenses in said State in connection therewith, for any year prior to the pass-
29 age and approval of said Act of 1905.

5. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

Afterwards, to wit, on the 7th day of August, 1905, the demurrer of John A. Knott et al was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

30 *The Joint Demurrer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, Three of the Above-named Defendants, to the Bill of Complaint of the Chicago, Burlington and Quincy Railway Company, the Above-named Complainant.*

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill

of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to the said bill, and for causes of demurrer show:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill against these defendants, or either of them.

2. That said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its entire intrastate traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity, on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said Act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Com-
31 missioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

4. That said bill of complaint is deficient for want of certainty in its averments, in this, that it fails to show the amount of the complainant's gross annual income from the operation of its lines of railroad in the State of Missouri, in transporting intra-state traffic, or the amount of its operating and maintenance expenses in said State in connection therewith, for any year prior to the passage and approval of said Act of 1905.

Wherefore, and for divers other good causes of demurrer appearing on said bill, these defendants demur thereto, and they pray the judgment of this honorable Court whether they shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

Afterwards, to wit on the 7th day of August, 1905, the Demurrer of William F. Davis was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

32 No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

Demurrer of William F. Davis, one of the Above-named Defendants, to the Bill of Complaint of the Chicago, Burlington and Quincy Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.
2. That said bill of complaint of the complainant is wholly without equity.
3. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

33 I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

Afterwards, to wit on the 7th day of August, 1905, the separate demurrer of James S. Robb was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

The Demurrer of James S. Robb, one of the Above-named Defendants, to the Bill of Complaint of the Chicago, Burlington and Quincy Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays
34 the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

Afterwards, to wit, on the 7th day of August, 1905, the Demurrer of Charles M. Daily was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

Demurrer of Charles M. Daily, one of the Above-named Defendants, to the Bill of Complaint of the Chicago, Burlington and Quincy Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill and for causes of demurrer, shows:

35 1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

Afterwards, to wit, on the 14th day of October, 1905, a waiver of affidavits to demurrers was filed. Said Waiver is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

36 The affidavits of the defendants to the several demurrers this day filed herein to the Bill of Complaint, are hereby waived.

Kansas City, Mo. August 7, 1905.

FRANK HAGERMAN,
Solicitor for Complainant.

Afterwards, to wit, on the 14th day of October, 1905, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO., Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Order.

This cause coming on for hearing this October 14, 1905, upon each and all of the demurrers heretofore filed by defendants herein, the complainant appeared by Frank Hagerman, its solicitor, and said demurring defendants by Sanford B. Ladd, their solicitor, and the court being fully advised in the premises overrules each and all of the said demurrers, and at the request of the said solicitor of said defendants they are given until the November 1905, Rules in which to file answers.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 28th day of November, 1905, the Joint Answer of John A. Knott, Joseph P. Rice and Frank A. Wightman was filed. Said answer is in words and figures as follows:

37 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James S. Robb, Defendants.

The Joint and Several Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Three of the Defendants, to the Bill of Complaint of the Chicago, Burlington & Quincy Railway Company, Complainant.

These defendants respectively now, and at all times hereafter saving to themselves all and all manner of benefit of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I.

They admit the averments of paragraph numbered 1 of complainant's bill of complaint, except in the following particular; They say that they have no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively, stated, or aggregate a total mileage of 1100 miles, as therein stated.

II.

These defendants admit that this cause arises under the
38 Constitution and laws of the United States; but they deny that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. They admit that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

They admit that they constitute the Board of Railroad Commissioners of the State of Missouri, and that the defendant, Herbert S. Hadley, is the Attorney General of the State of Missouri, but they deny that either they or the said defendant, Hadley, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

They admit that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said

state mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road, or other roads in the state of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, these defendants have no knowledge, information or belief.

V.

They admit that paragraph V of the complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I, and J, respectively. They admit that the statutes of the state provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General, by the statutes of the state, they aver that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri,
39 of 1899, and an Act of the General Assembly of the state of Missouri, entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private', by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this state, and providing for the manner of so doing and enforcing the same," approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said statutes and Act, this court will take judicial notice, prescribe particularly all the duties imposed by law upon these defendants, constituting the board of Railroad Commissioners, and upon prosecuting attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this state governing or affecting the same; and they pray leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer, with like effect as if they had been fully set out herein.

VI.

These defendants admit the passage by the Legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

These defendants admit the passage by the Legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act is correctly set out in paragraph VII of said bill of complaint. They admit that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation

of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but these defendants deny that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act in excess of the maximum rates fixed by said
40 Act of 1905. They admit that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but these defendants deny that such change could not and cannot be made by the complainant without jeopardizing its property interests. These defendants deny that they had, at or before the filing of said bill of complaint, threatened to enforce the provisions of the Act of 1905, by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers, or by determining or adjudging the complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and they deny that they proposed to do any of said things. They deny that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or to direct the Attorney General to prosecute the complainant, or to recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. They deny that at that time they proposed to make any such investigations. On the contrary, these defendants aver that when this suit was begun the time had not arrived at which these defendants could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by
41 them in respect of the matter when said Act of 1905 should have taken effect. They deny that any prosecuting attorney or the Attorney General would have conducted such prosecutions, or sought to recover any such penalties.

As to whether shippers along the line of complainant's railroad were then and are now numerous, or engaged daily, or at all, in making or receiving shipments to or from points in the state of Missouri of any freight of the special classes designated in said Act of 1905, these defendants have no knowledge, information or belief. They deny that by any such shippers or shipper there would have been, or

will be, instituted suits to recover of the complainant any damages or attorney's fees.

Whether any other shippers in the counties in the state where the complainant's line of road extends are interested with those named as defendants herein, these defendants have no knowledge, information or belief; but they deny that any shipper or other person not named as defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

These defendants deny that said Act of 1905 is invalid, is unconstitutional, or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint.

They deny that said Act fixes rates unreasonable in amount, or that will, if enforced, confiscate the property of the complainant or require it to carry any of the commodities specified therein, or to conduct its freight or other local traffic in the state of Missouri, without profit or reward, or for a sum which will not pay the actual operating expenses necessarily incurred in performing said services.

They deny that any part of said Act is contrary to, or violative of any of the provisions of the Constitution of the United States, or of the fourteenth amendment thereto. They deny that said Act is discriminatory, or thereby violative of said fourteenth amendment.

They deny that the provision of said Act that in computing the rate of freight the distance shall be computed from the point
42 where it is received to the point of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract, or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the Federal Constitution, or of any amendment thereto, is violated, or that the freedom of contract, guaranteed by section 4, article 2, of the state constitution, is denied.

They deny that said law as it now stands is uncertain, as averred in subdivision (*d*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason; or that said Act of 1905 is invalid because of any reason stated in said subdivision (*d*). They deny that said section 1194*a* is a discrimination between individuals and corporations, or denies to the complainant the equal protection of the law guaranteed it by the fourteenth amendment to the Constitution of the United States. These defendants further aver that even if said section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid enactment capable of enforcement. They aver that the effect of said Section 1194 is not to discriminate against said complainant, and that at the time of the taking effect of said Act of 1905, there was not, and is not now, any railroad or part of railroad in the state of Missouri which is not owned and operated by a railroad company.

IX.

As to the number of miles of railroad comprised in the complainant's system of railroads, as stated in paragraph IX of complainant's bill of complaint, these defendants have no knowledge, information or belief; or whether the railroads of its system are operated together as continuous lines or as through routes for the transportation of freight or passengers; these defendants deny that at present, or ever, the complainant has only been able to carry on its local business in the state of Missouri without bankruptcy, because of its earnings from inter-state business; they deny that under the law the reasonableness of rates prescribed by a state for transpor-
43 tation between points within its boundaries must be determined solely without reference to its interstate business or the earnings therefrom.

These defendants have no knowledge, information or belief as to whether the present schedule of rates published, charged or maintained by the complainant for the transportation of property between points on its lines in the state of Missouri is lawful, just or reasonable to the public. They deny that said schedule as respects many of the rates, has been in effect under the sanction of, or as prescribed by these defendants, or that it has been adjusted with reference to the business or commercial necessities of the people of Missouri, or that the freight of different kinds has been classified as reasonably required by the difference in the cost of transportation, size, value and other circumstances bearing thereon.

As to whether said adjustment was made so that commodities shall, and whether they do move freely over the lines of the complainant, these defendants have no knowledge, information or belief. These defendants, however, aver, that so far from any schedule of rates adjusted by the complainant having received the sanction of these defendants, many of the rates in said schedule have been fixed arbitrarily by the complainant and are very much lower than those which they have been authorized to charge by these defendants.

These defendants deny that the present rates of the complainant on commodities locally transported between points in this state are not now, or that they have not at all times been, remunerative to or afford the complainant a fair and reasonable return for its services in that behalf and upon the value of its property employed therein. They deny that the cost of doing the business locally in the state of Missouri is three times the average cost and expense of transporting its entire traffic within the state.

While it may be true, as averred in paragraph IX of complainant's bill of complaint, that local traffic is largely handled upon local trains, these defendants have no knowledge, information or belief whether such trains receive or deliver freight at each station, and they deny that such trains do not have a full train load for any
44 part of the journey; on the contrary they aver that often through trains are transported by the complainant for the whole, or a large part of the journey within the limits of this state. They deny that, for any reason stated in said paragraph IX of the bill of complaint, the cost of handling local traffic is much greater

than for through business, or that through business is done with greater economy in any other respect. They deny that the receipts from local business are little in excess of the average receipts for the transportation of all its traffic, or that such local business is now performed at any loss, or that the complainant will be compelled to so reduce its rates upon the articles and commodities embraced in said Act, or that any such reduction will result in its loss of $173,770.44, or any sum whatever, or 32.22 per cent or any other per cent upon the receipts of the complainant for the transportation of the commodities covered by said Act for the year 1904, had said Act been in effect during said year.

These defendants deny that if charges should be made by the complainant for the classes of freight mentioned in said Act of 1905 at the maximum rates therein fixed for state shipments, the complainant would be required to carry the same, or any part thereof, without profit or at a loss. They deny that the rates considered either separately or as a whole, or in connection with the entire traffic of the complainant in the state of Missouri, are unjust, unreasonably low, or confiscatory in their nature.

They deny that the legislature cannot compel the complainant to carry a commodity, or commodities, for less than cost and a fair profit, or that such will be the effect of the Act of 1905.

These defendants have no knowledge, information or belief whether the change in the rates upon the commodities embraced by said Act will not increase the volume of traffic, or the earnings therefrom, but they deny that the effect of said Act will be, in the future, to diminish the earnings from business local to the state of Missouri to any degree whatever at any time.

45 They deny that the provision in said Act of 1905, that in computing the distance upon which said maximum rates shall be based, the whole distance over which the shipment is transported in the state shall be considered, notwithstanding it may be over the roads of several companies, is invalid for the reason stated in said paragraph IX of said bill of complaint, or for any reason whatever; they deny that said provision will operate to reduce rates upon through shipments so as to cause them to be unreasonable, confiscatory or unjust in any degree whatever. They deny that said provision makes any reduction that is arbitrary, discriminatory or not based upon the just difference in the cost to the carriers or other circumstances, or that it requires the carriers concerned in a through shipment to enter into involuntary contractual relations in respect to such shipment, or the division of the through rate; and they deny that the whole, or any part, of said Act of 1905 is in conflict with the constitutional provisions mentioned in the bill of complaint for any reason stated in said paragraph IX of the bill of complaint, or for any other reason whatever.

X.

These defendants admit that the companies mentioned in paragraph X of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maxi-

mum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their state business without any profit. But these defendants deny that such claim is in point of fact true.

These defendants deny that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business, or that for that reason said Act is invalid as against said companies.

They deny that said Act, if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroad in this state. They aver that the only discrimination of which the complainant will be allowed to complain is a discrimination against itself in favor of some other person or corporation; and they deny that any of the provisions of the Constitution of the
46 United States, or any of the amendments thereto, are in any respect violated by said Act.

XI.

Further answering, and with special reference to the averments of paragraph XI of the complainant's bill of complaint, these defendants deny that said Act of 1905 fixes and established maximum rates which are unjust, unreasonable or unconstitutional for any reason.

These defendants have no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same reduces the rate thereon less than on sale, cement, lumber, lath or shingles. They have no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances, or have remained in substantially the same classes for any period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

They deny that any reduction in rates upon articles affected by the said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities, or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the state of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XI or the bill of complaint. They deny that the legislature had, or has, established maximum rates of charges for the transportation of all kinds of property, or that even if the legislature had done so, any change effected in such rates by said Act of 1905, is presumably

unfair or unreasonable in any respect. They deny that the
47 legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XII.

These defendants further answering say, that they are informed and believe that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the state of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such a manner as to yield obedience to said Act, and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their interstate business, but determined, on concerted action among themselves, to disobey said Act, to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the state from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in the complainant's bill of complaint.

These defendants further aver that in pursuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905, each for itself, file in said court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the same relief; and did on the same day, in each of said suits, obtain
48 from this court a restraining order, directed to, and which was served upon, these defendants and the Attorney General of the state of Missouri, and certain persons designated in said bills of complaint as shippers, enjoining these defendants and the Attorney General from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said Act, (for the express terms of which said order these defendants pray leave to refer to the same as it appears in the record of this cause) and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

These defendants say that they are informed and believe that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its intra-state traffic,

but that a very large number of articles, and a very large part of its intra-state traffic, remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And these defendants say that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-state business.

These defendants are informed and believe, that the complainant, of it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule of tariff of rates upon all the articles of freight transported by it in carrying on its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said act, would have been not unreasonable or unjust, either of itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

49 These defendants further aver that the complainant afforded to these defendants, as a Board of Railroad Commissioners no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in this Act, should be not unreasonable or unjust, either to the complainant or to the public.

These defendants further say that if the complainant had failed to so revise or to attempt to so revise its schedule, these defendants, as such Board, would, if they had been given the opportunity which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and they believe that they could have done so.

These defendants further say that by the issue of the restraining order, and the preliminary injunction in this cause, they have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before these defendants, as such board, could lawfully act in the premises, has unwarrantably assumed that these defendants, as such Board, would

fix and establish a schedule of rates which would be unjust to the complainant.

These defendants say that in view of the statutes of this state, which define the duties to be discharged by them as such Board, this action ought not to be maintained, because it was brought before these defendants had any oppprtunity to discharge any of such duties, or act in the matter of a general revision of the Schedule of rates, made necessary by said Act of 1905.

50 These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General,
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

Afterwards, to wit, on the 1st day of December, 1905, the Answer of Herbert S. Hadley, Attorney General was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James S. Robb, Defendants.

51 *The Answer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Defendants, to the Bill of Complaint of the Chicago, Burlington & Quincy Railway Company, Complainant.*

This defendant now, and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainities and imper-

fections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

I.

He admits the averments of paragraph numbered 1 of complainant's bill of complaint, except in the following particular: He says that he has no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively, stated, or aggregate a total mileage of 1100 miles, as therein stated.

II.

This defendant admits that this cause arises under the Constitution and laws of the United States, but he denies that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. He admits that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000).

III.

He admits that the defendants John A. Knott, Joseph P. Rice and Frank A. Wightman constitute the Board of Railroad Commissioners of the State of Missouri, and that this defendant is the Attorney General of the State of Missouri, but he denies that either they or this defendant, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

He admits that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of
52 said state mentioned in paragraph IV of said bill of complaint: but whether each or any of them are engaged in shipping over the complainant's road, or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, this defendant has no knowledge, information or belief.

V.

He admits that paragraph V of the complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I and J, respectively. He admits that the statutes of the state provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General, by the statutes of the state, he avers that Articles II and IV of Chapter

12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the state of Missouri, entitled, "An Act to amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this state, and providing for the manner of so doing and enforcing the same" approved April 6 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said statutes and Act, this court will take judicial notice, prescribe particularly all the duties imposed by law upon those defendants, constituting the Board of Railroad Commissioners, and upon prosecuting attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this state governing or affecting the same; and he prays leave to refer to said statutes and said Act, and that the same
53 may be considered in connection with this answer, with like effect as if they had been fully set out herein.

VI.

This defendant admits the passage by the Legislature of the State of Missouri of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

VII.

This defendant admits the passage by the Legislature of the State of Missouri of the Act approved April 15, 1905 and that said Act is correctly set out in paragraph VII of said bill of complaint. He admits that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but this defendant denies that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act in excess of the maximum rates fixed by said Act of 1905. He admits that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but this defendant denies that such change could not and cannot be made by the complainant without jeopardizing its property interests. This defendant denies that the Railroad Commissioners had at or before the filing of said bill of complaint, threatened to enforce the provisions of the Act of 1905, by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers, or by determining or adjudging the complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring

the complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned
54 in said Act of 1905; and he denies that they proposed to do any of said things. He denies that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or to direct the Attorney General to prosecute the complainant, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. He denies that at that time they proposed to make any such investigations. On the contrary, this defendant avers that when this suit was begun the time had not arrived at which the Railroad Commissioners could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905 should have taken effect. He denies that any prosecuting attorney or the Attorney General would have conducted such prosecutions, or sought to recover any such penalties.

As to whether shippers along the line of complainant's railroad were then and are now numerous, or engaged daily, or at all, in making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Act of 1905, this defendant has no knowledge, information or belief. He denies that by any such shippers or shipper there would have been or will be, instituted suits to recover of the complainant any damages or attorney's fees.

Whether any other shippers in the counties in the state where the complainant's line of road extends are interested with those named as defendants herein, this defendant has no knowledge, information or belief; but he denies that any shipper or other person not
55 named as defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

This defendant denies that said Act of 1905 is invalid, is unconstitutional, or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint.

He denies that said Act fixes rates unreasonable in amount, or that will, if enforced, confiscate the property of the complainant or require it to carry any of the commodities specified therein, or to conduct its freight or other local traffic in the state of Missouri, without profit or reward, or for a sum which will not pay the actual operating expenses necessarily incurred in performing said services.

He denies that any part of said Act is contrary to, or violative of any of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto. He denies that said Act is discriminatory, or thereby violative of said Fourteenth Amendment.

He denies that the provision of said Act that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract, or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the Federal Constitution, or of any amendment thereto, is violated, or that the freedom of contract, guaranteed by Section 4, Article 2, of the State Constitution, is denied.

He denies that said law as it now stands is uncertain, as averred in subdivision (*d*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason; or that said Act of 1905 is invalid because of any reason stated in said subdivision (*d*). He denies that said section 1194*a* is a discrimination between individuals and corporations, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United
56 States. This defendant further avers that even if said section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid enactment capable of enforcement. He avers that the effect of said Section 1194 is not to discriminate against said complainant and that at the time of the taking effect of said Act of 1905, there was not, and is not now, any railroad or part of railroad in the State of Missouri which is not owned and operated by a railroad company.

IX.

As to the number of miles of railroad comprised in the complainant's system of railroads, as stated in paragraph IX of complainant's bill of complaint, this defendant has no knowledge, information or belief; or whether the railroads of its system are operated together as continuous lines or as through routes for the transportation of freight or passengers; this defendant denies that at present, or ever, the complainant has only been able to carry on its local business in the state of Missouri without bankruptcy, because of its earnings from interstate business; he denies that under the law the reasonableness of rates prescribed by a state for transportation between points within its boundaries must be determined solely without reference to its interstate business or the earnings therefrom.

This defendant has no knowledge, information or belief as to whether the present schedule of rates published, charged or maintained by the complainant for the transportation of property between points in its lines in the State of Missouri is lawful, just or reasonable to the public. He denies that said schedule as respects many of the rates, had been in effect under the sanction of, or as prescribed by said Board of Railroad Commissioners, or that it has

been adjusted with reference to the business or commercial necessities of the people of Missouri, or that the freight of different kinds has been classified as reasonably required by the difference in the cost of transportation, size, value and other circumstances bearing thereon.

57 As to whether said adjustment was made so that commodities shall, and whether they do move freely over the lines of the complainant, this defendant has no knowledge, information or belief. This defendant, however, avers, that so far from any schedule of rates adjusted by the complainant having received the sanction of said Board, many of the rates in said schedule have been fixed arbitrarily by the complainant and are very much lower than those which they have been authorized to charge by said Board.

This defendant denies that the present rates of the complainant on commodities locally transported between points in this state are not now, or that they have not at all times been, remunerative to or afford the complainant a fair and reasonable return for its services in that behalf and upon the value of its property employed therein. He denies that the cost of doing the business locally in the State of Missouri is three times the average cost and expense of transporting its entire traffic within the state.

While it may be true, as averred in paragraph IX of complainant's bill of complaint, that local traffic is largely handled upon local trains, this defendant has no knowledge, information or belief whether such trains receive or deliver freight at each station, and he denies that such trains do not have a full train load for any part of the journey; on the contrary he avers that often through trains are transported by the complainant for the whole, or a large part of the journey within the limits of this state. He denies that, for any reason stated in said paragraph IX of the bill of complaint, the cost of handling local traffic is much greater than for through business, or that through business is done with greater economy in any other respect. He denies that the receipts from local business are little in excess of the average receipts for the transportation of all its traffic, or that such local business is now performed at any loss, or that the complainant will be compelled to so reduce its rates upon the articles and commodities embraced in said Act, or that any such reduction will result in its loss of $173,770.44, or any sum whatever, or 32.22 per cent or any other per cent upon the receipts of the complainant for the transportation of the commodities covered by said Act for the year 1904, had said Act been in effect during said year.

58 This defendant denies that if charges should be made by the complainant for the classes of freight mentioned in said Act of 1905 at the maximum rates therein fixed for state shipments, the complainant would be required to carry the same, or any part thereof, without profit or at a loss. He denies that the rates considered either separately or as a whole, or in connection with the entire traffic of the complainant in the state of Missouri, are unjust, unreasonably low, or confiscatory in their nature.

He denies that the Legislature cannot compel the complainant

to carry a commodity, or commodities, for less than cost and a fair profit, or that such will be the effect of the Act of 1905.

This defendant has no knowledge, information or belief whether the change in the rates upon the commodities embraced by said Act will not increase the volume of traffic, or the earnings therefrom, but he denies that the effect of said Act will be, in the future, to diminish the earnings from business local to the state of Missouri to any degree whatever at any time.

He denies that the provision in said Act of 1905, that in computing the distance upon which said maximum rates shall be based, the whole distance over which the shipment is transported in the state shall be considered, notwithstanding it may be over the roads of several companies, is invalid for the reason stated in said paragraph IX of said bill of complaint, or for any reason whatever; he denies that said provision will operate to reduce rates upon through shipments so as to cause them to be unreasonable, confiscatory or unjust in any degree whatever. He denies that said provision makes any reduction that is arbitrary, discriminatory or not based upon the just difference in the cost to the carriers or other circumstances, or that it required the carriers concerned in a through shipment to enter into involuntary contractual relations in respect to such shipment, or the division of through rate; and he denies that the whole, or any part, of said Act of 1905 is in conflict with the constitutional provisions mentioned in the bill of complaint for any reason stated in said paragraph IX of the bill of complaint, or for any other reason whatever.

59 X.

This defendant admits that the companies mentioned in paragraph X of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged, would result in their doing their state business without any profit. But this defendant denies that such claim is in point of fact true.

This defendant denies that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies or that they will not permit any of them to make a profit upon their state business or that for that reason said Act is invalid as against said companies.

He denies that said Act, if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this state. He avers that the only discrimination of which the complainant will be allowed to complain is a discrimination against itself in favor of some other person or corporation; and he denies that any of the provisions of the Constitution of the United States, or of any of the amendments thereto, are in any respect violated by said Act.

XI.

Further answering, and with special reference to the averments of paragraph XI of the complainant's bill of complaint, this defendant denies that said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

This defendant has no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same reduces the rate thereon less than on salt, cement, lumber, lath or shingles. He has no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances, or have remained in substantially the same classes for any
60 period of time, or whether the same has been recognized, approved or enacted into law by any statutory classification in effect in Missouri.

He denies that any reduction in rates upon articles affected by said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities, or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws by any of the methods or for any of the reasons mentioned in said paragraph XI of the bill of complaint. He denies that the legislature had, or has established maximum rates of charges for the transportation of all kinds of property, or that even if the legislature had done so any change effected in such rates by said Act of 1905 is presumably unfair or unreasonable in any respect. He denies that the legislature requires the complainant to discriminate in favor of any persons or shippers, or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XII.

This defendant, further answering, avers that he is not a proper party defendant to the said bill of complaint, and that the same is wholly without equity as against this defendant.

XIII.

This defendant further answering says that he is informed and believes that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the state of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or

make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodi-
61 ties transported by them, in such a manner as to yield obedience to said Act, and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their interstate business, but determined, on concerted action among themselves to disobey said Act, to deny its validity and any obligation on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the state from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds in this complainant's bill of complaint.

This defendant further avers that in pursuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June 1905, each for itself, file in said court its bill of complaint, all of them being upon substantiallly the same grounds as those stated in the complainant's bill of complaint, and praying for substantially the same relief; and did on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon the members of said Board of Railroad Commissioners, and certain persons designated in said bills of complaint as shippers, enjoining this defendant and the said Board from performing any of the duties imposed upon them as state officials, by law, looking to the enforcement of the provisions of said Act (for the express terms of which said order this defendant prays leave to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

This defendant says that he is informed and believes that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its intra-state traffic, but that a very large number of articles, and a very large part of its intra-state traffic, remain wholly unaffected and unregulated as to rates,
62 by said Act or by any other existing statute. And this defendant says that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-state business.

This defendant is informed and believes that the complainant, if it had chosen to do so, instead of attacking the reasonableness of fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule of tariff of rates upon all the articles of freight transported by it in carrying on its intra-state traffic, including those mentioned in said Act of 1905, in such manner that the rates for carrying the articles not mentioned in said

Act, would have been not unreasonable or unjust, either of itself, or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-state business.

This defendant further avers that the complainant afforded to the Board of Railroad Commissioners no opportunity after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-state traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in this Act, should be not unreasonable or unjust, either to the complainant or to the public.

This defendant further says that if the complainant had failed to so revise or to attempt to so revise its schedule the defendants, members of such Board, would, if they had been given the opportunity which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complaint in its intra-state traffic, as would have observed or complied with the pro-
63 visions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and he believes that they could have done so.

This defendant further says that by the issue of the restraining order, and the preliminary injunction in this cause, the members of said Board have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before they, as such Board, could lawfully act in the premises, has unwarrantably assumed that they, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

This defendant says that in view of the statutes of this state, which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before they had any opportunity to discharge any of such duties, or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to

be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General,
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

64 Afterwards, to wit, on the 2nd day of December, 1905, the answer of Charles M. Daily, William F. Davis and James F. Robb, was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY,
Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis, and James F. Robb, Defendants.

The Joint and Several Answer of the Defendants, Charles M. Dailey, William F. Davis and James F. Robb, to the Bill of Complaint of Chicago, Burlington & Quincy Railway Company, complainant.

These defendants respectively, now and at all times hereafter having to themselves and each of them all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants and each of them are advised it is material or necessary for them and each of them to make answer to, answering, say, each of them for himself.

I.

They admit the averments contained in paragraph I of said bill of complaint.

II.

As to whether said Act of 1905 is unconstitutional for any reason these defendants have no knowledge, information or belief. All the other averments of paragraph II of said bill of complaint, these defendants admit.

65 III.

They admit each and every of the averments contained in paragraph III of said bill of complaint, except in this respect: Neither of these defendants has any knowledge, information or belief as to

the duties which the Railroad Commissioners or the Attorney General are required by law to do or perform.

IV.

They admit the averments contained in paragraph IV of the bill of complaint, except in this particular: They have no knowledge, information or belief as to whether they or any one of them represents any class of shippers.

V.

They admit all the averments contained in paragraph V of the bill of complaint, with these exceptions, to-wit: They have no knowledge, information or belief as to what the statutes of the State provide in respect of the duties of the Railroad Commissioners, or of any prosecuting attorney or of the Attorney General.

VI.

They admit each and every of the averments of paragraph VI of the bill of complaint.

VII.

They admit that the legislature of the State of Missouri, at its session of 1905, passed the act called in said bill of complaint, the Act of 1905.

As to whether shippers along the line of complainant's railroad are numerous, or daily engaged in making or receiving shipments of freight of the special classes designated in the Act of 1905, these defendants have no knowledge, information or belief.

They deny that they were intending or proposing to institute against the complainant any suit whatever to recover of the complainant any damages or any attorneys' fees.

They have no knowledge, information or belief as to whether any other shipper is interested with these defendants, or any of them, and they deny that they, or any one of them, should defend for any such person.

66 As to each and every other allegation contained in said paragraph VII of the bill of complaint, these defendants say that they have no knowledge, information or belief.

VIII.

As to the truth of the averments and each of them contained in paragraph VIII of said bill of complaint, these defendants say that they have no knowledge, information or belief.

IX.

These defendants have no knowledge, information or belief as to the truth of the averments or any of them contained in paragraph IX of the bill of complaint.

X.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them contained in paragraph X of the bill of complaint.

XI.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XI of the bill of complaint.

XII.

These defendants, further answering, say that none of them are proper parties defendant to the said bill of complaint and that each one of them has been improperly joined as a defendant herein; that there is no equity in said bill as against any one of them, and that in any event no costs ought to be adjudged herein against any of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, or any of them without this, that any other matter, cause or thing in the complainant's said bill of complaint or amendments thereto contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants are ready and willing to aver, maintain and prove, as
67 this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General,
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

In order to avoid unnecessarily uncumbering the record it is agreed that admissions, denials and averments of want of knowledge, information and belief, contained in the foregoing answer, shall be taken and considered in every stage of this suit, with the same force and effect as if such admissions, denials or averments had mentioned specifically and in the language of the bill of complaint, the allegations thereof, which they are respectively intended to meet; that such admissions, denials and averments as to a number of allegations, as a whole, contained in the bill of complaint, shall have the same force and effect as if each of such allegations had been specifically referred to in the language of said bill of complaint.

FRANK HAGERMAN,
Solicitor for Complainant.
HERBERT S. HADLEY,
Attorney General,
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendant.

——— ———,
Of Counsel.

68 Afterwards, to wit, on the 17th day of February, 1906, the Replication of Complainant to the answer of Charles M. Daily, William F. Davis and James F. Robb, Shippers, was filed. Said replication is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Charles M. Daily, William F. Davis, and James F. Robb, Shippers.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

J. W. BLYTHE,
E. M. SHELTON,
O. M. SPENCER,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

69 Afterwards, to wit, on the 17th day of February, 1906, the Replication of Complainant to Answer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners was filed. Said Replication is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

J. W. BLYTHE,
E. M. SHELTON,
O. M. SPENCER,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendants.

70 Afterwards, to wit, on the 17th day of February, 1906, the Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General was filed. Said Replication is in words and figures as follows:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainities and insufficiencies of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

J. W. BLYTHE,
E. M. SHELTON,
O. M. SPENCER,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for said Defendant.

71 Afterwards, to wit, on the 26th day of February, 1906, a Motion of Defendants to refer cause to a Master was filed. Said Motion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Charles M. Daily, William F. Davis and James S. Robb, Defendants.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and Herbert S. Hadley, Attorney General of the State of Missouri, pray and move the court to make an order referring this cause to one of the standing Masters of the court, or to a Special Master, to be appointed by the court, under proper directions therefor, to take the evidence herein and report the same to the court, with or without findings of fact by such Master, with all convenient speed, or an order appointing an examiner to take the testimony in the cause and return such testimony into court with all convenient speed.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

72 Afterwards, to wit, on the 27th day of February, 1906, a Motion of Complainants for Oral hearing in Open Court was filed. Said motion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME.

73 No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Motion.

Complainant in each one of the above entitled causes moves the court to set this case down for hearing upon evidence to be adduced orally in open court on final hearing.

FRANK HAGERMAN,
Solicitor for Complainants.

The above motion may be treated as if separately made and filed in each of above cases, and due and timely notice thereof is acknowledged.

HERBERT S. HADLEY,
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for the Answering Defendants.

74 Afterwards, to wit, on the 5th day of March, 1906, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Order.

The applications, in the nature of a motion, of the complainants for an oral hearing in open court of the evidence herein, and the motion of the defendants for a reference to a Master or the appointment of an Examiner to take the testimony herein, having been submitted to the court, and the causes being at issue, the court decides to refer the same to a Special Master.

It is accordingly ordered that the above numbered causes be, and they are hereby, referred to Frank L. Scofield, Esq., as Special Master, with directions to take the evidence orally on the issues involved, and to report his findings of facts thereon to the court at the earliest time practicable, together with the evidence in the causes.

(1) He shall so hear, and only until the court otherwise orders, such above numbered causes as the parties by their counsel shall at the beginning of the inquiry agree to be heard.

(2) The Special Master, on reasonable notice, by mail or otherwise, deemed by him most advisable, to the counsel of the respective parties, shall fix the times and places for the taking of testi-
75 mony, and he is authorized to fix the same as to him may seem most convenient to the parties in interest, having regard to the suitability and necessity of such times and places.

(3) The Special Master is authorized to employ a competent and reliable stenographer, whose compensation shall be determined by the court, to take down the testimony and reduce the same to writing.

(4) The court directs that the Special Master shall proceed, after the beginning of the taking of testimony, with all reasonable speed, as it is important to all concerned that the hearing of the causes shall be expedited. To this end, the Special Master will require respective counsel to present their testimony promptly, and confine the same to the issues involved, in order to avoid, as far as practicable, the growing evil in practice before Masters of unduly burdening the record with irrelevant and immaterial matters and the litigants with unnecessary costs.

(5) The Special Master shall permit any pleadings to be amended as by Equity Rule Provided, and rule upon the admissibility of any evidence, and may refer to the court any question which arises before him in the progress of the hearing.

(6) The Clerk of this court will forthwith furnish the said Special Master with a certified copy of this order, and without further or special order turn over to said Special Master, taking his receipt therefor, any pleadings or court papers pertaining to the causes being investigated by him, on his request made therefor.

(Signed) JNO. F. PHILIPS, *Judge*.

Afterwards, to wit, on the 11th day of June, 1907, a motion was filed. Said motion is in words and figures as follows:

76 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Motion.

Now comes complainant in each of the above entitled causes and moves the court for leave to file an amended and supplemental bill seeking to enjoin the enforcement of the various acts of the legislature regulating rates adopted at the session in 1907, and making

as additional parties defendant H. R. Oglesby, Railroad Commissioner, and the county judges and treasurers of the counties through which each of the complainant's lines run, together with citizens traveling upon the road of each complainant as passengers, all as will be more fully shown by the amended and supplemental bill to be presented upon the hearing of this motion.

FRANK HAGERMAN,
Solicitor for Complainants

Afterwards, to wit, on the 13th day of June, 1907, a Form of Complainant's Amended and Supplemental Bill was filed.

77 Afterwards, to wit, on the 13th day of June, 1907, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 13, 1907, asked, pending a hearing of the application to file an amended and supplemental bill, the general form of which has been submitted to the court, the right to temporarily file same and for a restraining order, but inasmuch as said application to file the bill for a temporary injunction has been set and noticed for hearing upon June 14th, 1907, at the first time convenient to the court, and it appearing to the court that it is desirable that a full argument be had after notice, yet that great harm might be done and much confusion arise if the *status quo* should be changed, and that it is to the best interest of the public and all parties interested that such *status quo* should be maintained until such hearing, it is therefore, upon the court's own motion, ordered that until further order herein the complainant, its officers, agents and employés be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907, mentioned in said bill and from complying with said acts, and the application for a restraining order will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

78 Afterwards, to wit, on the 14th day of June, 1907, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 14th, 1907, presented its amended and supplemental bill, and asked leave to file the same and for a restraining order, or temporary injunction. The court was advised by the assistant attorney general, who appeared, that the attorney general is absent and desired to be heard, and in the meantime that suits were this day by the attorney general instituted in the circuit courts of the state to require the various railroad companies of the State to put in force the rates fixed by the acts of the Legislature mentioned in the bill. It is thereupon ordered that the matter be set down for hearing upon the 15th day of June, 1907, at two o'clock p. m., and the supplemental bill herein shall be deposited with the clerk. And it appearing to the court that it is desirable that a full hearing be had of the various matters, yet that great harm might be done and much confusion arise if the *status quo* should be changed, and that it is to the best interest of the public and all parties interested that such *status quo* should be maintained until such hearing, it is therefore, upon the court's own motion, again ordered that until further order herein the complainant, its officers, agents and employés, be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order and temporary injunction will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

79 Afterwards, to wit, on the 15th day of June, 1907, a Notice was filed. Said notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Defendants and their Counsel:

Complainants will at the court room at Kansas City, Missouri, upon June 14th, 1907, at ten o'clock A. M., or as soon as counsel can be heard, ask leave of court to file an amended and supplemental bill in each of the foregoing cases, in substantial form shown by copy hereto attached, and at the same time ask for a temporary injunction.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of this notice June 11th, 1907.
HERBERT S. HADLEY,
Solicitor for Defendants.

Afterwards, to wit, on the 15th day of June, 1907, the Motion for leave to file Amended Supplemental Bill was submitted.

80 Afterwards, to wit on the 17th day of June, 1907, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing process shall issue so that if the court hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplementary, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of the court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction heretofore issued as to and in connection with the act of 1905. By consent of the complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion shall remain in force until June 19th, 1907, at 6 o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power, upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its waybills for state freight.

(Signed) SMITH McPHERSON, *Judge.*

81 Afterwards, towit, on the 11th day of June, 1907, an amended and supplemental bill was filed. Said amended and supplemental bill is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Complainant's Amended and Supplemental Bill.

To the Honorable Judges of the Circuit Court aforesaid:

Your orator, by leave of court, brings this, its amended bill, and thereupon avers:

1. Upon the 16th day of June, 1905, it filed herein against the Defendants in the above entitled case its original bill, (reference to which is now made the same as if copied herein), seeking to enjoin as illegal, unconstitutional and confiscatory the enforcement of the provisions of an act of the legislature of the State of Missouri (herein called the "Act of 1905"), seeking to fix certain maximum freight rates.

2. The said legislature also passed in 1905 an act approved April 14, 1905, in words and figures as follows:

"Corporations, Private: Railroad Classification Charges—Commissioners.

An Act to amend Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad Classification, Charges, Commissioners,' by adding a new section thereto, to be known as Section 1195*a*.

SECTION 1. Fixing charges for carrying undressed stone, crushed rock and building or paving brick.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad Classification, Charges, Commissioners,' be, and the same is hereby amended by adding a new section thereto, to be known as Section 1195*a*, to read as follows:

82 SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this State, shall charge for or receive for carrying a carload of forty thousand pounds of undressed stone, sand or building or paving bricks more than forty cents per ton for the first ten miles, twenty cents per ton for the second ten miles, or more than

five cents per ton for each additional ten miles, and any excess in weight shall be charged for at the same rate per ton as for an even carload.

Approved, April 14, 1905."

3. Since the filing of said original bill and upon or about January 1, 1907, the office of the said Joseph P. Rice as a railroad and warehouse commissioner expired by limitation of the time for which he was elected and H. R. Oglesby has been duly elected and qualified as his successor, and is now acting as such. It is, therefore, proper that he should be made a party defendant hereto.

4. Each of the railroad companies operating railroads in the State of Missouri at the same time filed in this court original bills to the same purport and for the same purpose, against said members of the Railway and Warehouse Commissioners and the Attorney General and certain shippers upon the line of its road. Such proceedings were had therein that temporary injunctions were issued, the causes were put at issue and duly referred to the Honorable Frank L. Schofield to take certain proofs and make certain findings of fact. The parties agreed that before taking the evidence in all the cases, they would first take that in three of them, temporarily suspending the taking of further testimony in the others. In accordance with said agreement the evidence was taken in the three cases instituted by the Missouri Pacific, Wabash and Chicago, Burlington & Quincy Railway Companies, and the said causes are now ready for submission to the special master upon the original bills so filed, and have been set for argument before him upon June 18, 1907.

5. The Governor of the State, in giving his written reasons for approving the Act of 1905, indicated that it was with some reluctance that he signed same, expressly stating that "the rate on live
83 stock seems unjust." So at the time of submitting his biennial general message to the 43rd General Assembly of the State, he called attention to the litigation aforesaid, and suggested a modification and amendment of the law to meet fatal defects therein. Thereafter, on February 27, 1907, he sent a special written message to the legislature, in which, among other things, he said in reference to the Act of 1905:

"The statute enacted by the last General Assembly is defective in the penalty clause, which applies only to railroads. The penalty should be made to apply to persons, corporations and partnerships. The cattle clause should be corrected in the light of the testimony adduced in the freight litigation so as to fix these rates at an amount that will stand the test of the judicial crucible."

6. Pursuant to this request and the acknowledgment thus made of the invalidity of the existing law, the enforcement of which was sought to be enjoined by the original bill, the legislature passed an act (herein called the Act of 1907) which will take effect on June 14, 1907, in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend Chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd General Assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194c-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:

SECTION 1194. Classification and charges for carrying freight in car load lots.

SECTION 1194*a*. Penalty for violation.

SECTION 1194*b*. Not to relieve railroad from complying with other laws.

SECTION 1194c. Repealing conflicting acts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That sections 1194, 1194*a* and 1194*b* of an act of the 43rd general assembly, approved April 15, 1905, concerning railroad classifications, charges, commissioners, and providing for a
84 penalty for a violation thereof, said sections being enacted in lieu of section 1194, chapter 12 of the Revised Statutes of Missouri, 1899, in "corporations, private," and section 1195*a* of an act of the 43rd general assembly, approved April 14, 1905, concerning railroad classifications, charges, commissioners, fixing charges for carrying undressed stone, crushed rock and building or paving brick, be and the same are hereby repealed, and the following, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194c-1 of said Revised Statutes are enacted in lieu thereof.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1191 as in classes A, B or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes and the commodities herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred

pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class H, in car loads, in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $8.00 per car load for the first twenty-five miles, and not exceeding $4.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof of over twelve miles. For the carriage of any of the articles comprising class H, in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class I, in car loads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first twenty-five miles, and not exceeding $2.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof. For a car load of 40,000 pounds of minimum weight undressed stone, crushed rock, sand, railroad ties, cord-
85 wood, building or paving brick, not exceeding 40 cents per ton of 2,000 pounds to the ton for the first fifty miles or fractional part thereof, and not exceeding five cents per ton per car load for the next ten miles or fractional part thereof, and not exceed-

ing 5 cents per ton per car load for each additional ten miles or fractional part thereof. In computing the rate of freight, according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. Any individual, company, or corporation owning, operating, managing or leasing any railroad, or part of railroad, designated in section 1194, or any officer, agent, representative or employee thereof who violates the provisions of section 1194, shall be adjudged guilty of a misdemeanor and, on conviction, shall be punished by a fine of not to exceed $5,000.00: Provided, that the money received from any fine under the provisions of this act shall be paid into the school fund in the county in which the case is prosecuted.

SECTION 1194*b*. This act shall not have the effect of relieving any person, partnership or corporation, owning or operating any railroad in this state from any liability or penalty heretofore incurred for failure to comply with any law of this state.

SECTION 1194*c*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by railroad companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

Approved March 19, 1907."

By this act an attempt was made to comply with the request of the Governor and to repeal the said Act of 1905, together with that mentioned in paragraph 3 hereof, with the exception that no penalty or liability incurred should be affected by such repeal, the purpose and intention of defendants being to attempt to enforce against your orator all penalties which accrued if the said acts are held to be illegal.

7. In addition thereto, the legislature in 1907 passed certain acts which will take effect upon June 14, 1907, being in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899, by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications.

SECTION 1. Fixing freight charges and classifications.
SECTION 2. Inconsistent acts repealed.
SECTION 3. Penalty for violation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article 4, chapter 12, of the Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' be and the same is hereby amended by adding a new section

thereto, to be known as section 1195*a*, which said section shall read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of rail-
86 road in this state, shall charge for or receive for carrying apples and pears in car loads of 24,00[0] pounds minimum weight, more than six cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not more than one cent per hundred pounds for each additional twenty-five miles or fractional part thereof. For strawberries, peaches, grapes and other berries in car loads of 18,000 pounds minimum weight, not exceeding fifteen cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof.

SEC. 2. All acts and parts of acts and all rules and reguations, freight schedules, classification[s] and grouping[s] by railroad[s] companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby repealed and declared void.

SEC. 3. Any individual company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, violating the provisions of this act, shall, on conviction, be adjudged guilty of a misdemeanor, and subject to a fine of not to exceed one thousand dollars for each offense.

Approved March 19, 1907."

"Corporations, Private: Railroads.

An Act to Provide Transportation on Railroads for the Shippers of Freight in This State in Carload Lots.

SECTION 1. Railroads to issue to certain shippers transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Whenever any railroad company or corporation doing business within the limits of this state shall receive any live stock to be shipped over the said road or roads by carload lots, said corporation shall, in consideration of the price paid for said carload lots, issue to the shipper, his agent or employee, at the time of making out the contract or bill of lading, a round trip ticket to and from said points designated in said bill of lading, without further expense to said shipper, provided that the points of destination are within this state, and in case said point of destination is without this state, then said railroad corporation shall issue to such shipper, his agent or employee, a round trip ticket to a point within this state nearest to the point without this state to which said shipment of live stock is shipped: Provided, that in case said shipper shall ship more than one car load at any one shipment the said railroad corporation shall not be compelled to give to said shipper more than one round trip ticket with such shipment, which said ticket shall be good on the freight train on which said stock is shipped, and on all trains

on said road carrying passengers on the return trip, and shall be good for a period of ten days, and any railroad company or corporation willfully violating the provisions of this section, or which shall fail, neglect or refuse to furnish and deliver such ticket to such shipper, his agent or employee, shall forfeit and pay, as a penalty, to said shipper, not less than three hundred dollars nor more than five hundred dollars, to be recovered by civil action in any court of competent jurisdiction.

Approved April 4, 1907."

8. All the averments of the original bill apply to the said Act of 1907 and also to each of the acts mentioned in paragraph 7 hereof, except that if for the classes of freight mentioned in the said
87 Acts of 1907 alone, or in all the Acts of 1907, your orator should charge the maximum rate therein authorized and practically capable of being charged, its total gross receipts from state traffic would be reduced in a very large sum, which though differing in items would not be as a whole substantially less than that mentioned in the original bill as to the Act of 1905. Each of said freight Acts of 1907 is violative of the provisions of the constitution to the same extent as was alleged as to the Act of 1905. But the freight Acts of 1907 did not so correct the evils of the former laws as set forth in the original bill, and the rates were thereby fixed at amounts that were unreasonable, and confiscatory, and less than the cost of the service.

9. The Governor in calling for the passage of said Act of 1907, and the legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905 which they conceived had in this litigation been proved to be unreasonable and confiscatory and could not be enforced. Notwithstanding this, the rates as finally so fixed, considered alone, were not upon such a basis as would return any reasonable or fair compensation to the complainant upon the value of that portion of its property devoted to such use. Even if the laws in existence in 1905 relative to passenger fares, had remained in force, still the freight rates as fixed by the said Acts of 1907 would have been unreasonable and confiscatory, and would not have given any just return upon the value of that portion of your orator's property as a whole devoted to state traffic. However, the legislature of the state, without any fixed or definite knowledge upon the subject of rates, erroneously conceived that if the increase as aforesaid in the freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates and so in substance they could legally overcome and offset any advantage from the increase in freight rates by decreasing the maximum rates to be charged for state passenger traffic about thirty-three and one-third
88 per cent, and thus, while defeating pending litigation, the public as a whole would not be the loser. The result was that at the same session, and as part and parcel of one transaction, and substantially as one law, and to accomplish such purpose, there was passed and the Governor approved, an act herein called the "Passen-

ger Act," which, if valid, will take effect on June 14, 1907. The same reads as follows:

"Corporations, Private: Railroads—Passenger Rates.

An Act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*.

SECTION 1191. Classification of railroads.
SECTION 1192. Passenger charges regulated.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That all of sections 1191 and 1192 of chapter 12, article 4 of the Revised Statutes of Missouri, 1899, be and the same are hereby repealed and three new sections be enacted in lieu therof, to be known as sections 1191 and 1192 and 1192*a*, so that said sections shall read as follows:

SECTION 1191. Roads classified.—All railroads in the state of Missouri are hereby divided into four classes, to be known as class A, class B, class C and class D. Class A shall include all through or trunk line railroads and all branch roads owned, leased, controlled or occupied by such through or trunk line railroad companies or corporations. Class B shall include all other railroads or parts of railroads owned, leased, controlled or occupied, or which may hereafter be owned, leased, controlled or occupied, either wholly or in part, by any trunk line company or corporation. Class C shall include all other railroads of a greater length than forty-five miles. Class D shall include all roads less than forty-five miles in length not owned, leased, controlled or occupied by any trunk line company or corporation.

SECTION 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, controlling or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile, for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In classes A, B and C, not exceeding two cents per mile, and in class D, not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SECTION 1192*a*. Any individual, company or corporation, or any agent or officer thereof, who shall violate any of the provisions of section 1192 of this act, shall be deemed guilty of a misdemeanor,

and upon conviction, shall pay a fine of not less than one hundred nor more than five hundred dollars.

Approved February 27, 1907."

10. All the averments of the original bill apply to said Pas-
89 senger Act. It is violative of each constitutional provision mentioned, and subject to each objection made, in the original bill to the Act of 1905, and all the facts there averred as to why the Act of 1905 should be held to be void and action thereunder restrained, are not only true as to the Acts of 1907 but also as to said Passenger Act. If enforced, it will reduce the earnings of your orator from said passenger business in the practical and ordinary operation of its road, substantially one-third. The state passenger earnings for the year 1906 were in the aggregate substantially one million five hundred ten thousand two hundred and seventy-two dollars, and yet, if the Passenger Act as aforesaid had been applied thereto, said earnings would have been reduced at least to the sum of one million, six thousand, eight hundred forty-eight dollars, or an annual loss of five hundred, three thousand, four hundred, and 24 dollars. The property of your orator in the state is used as a whole both for state and interstate freight and passenger business, and, as such, is quite valuable. The value of that portion devoted to the carriage of state business, considered as a whole, or separately as to the passenger business only, is such that in either case the reduction in rates by said Passenger Act would not only fail to make any reasonable return on such valuation, but would cause such business to be done at an actual loss.

11. The said Passenger Act was passed for the avowed purpose of reducing the state passenger rates of your orator so as to offset and overcome a supposed increase of certain of the state freight rates made under the Act of 1907, and the attempt was made to frame each act so as to avoid the injunctive relief in this and in each action heretofore instituted by the other railroad companies operating lines in Missouri. As your orator is informed and believes, the state and defendants now justly and improperly claim that since upon the face of these acts provision is only made for general penalties, there is no remedy by injunction; that the original bill can no longer be maintained, and that the state through its officers is en-
90 titled to have enforced the various statutory penalties for each shipment made and each passenger carried at a rate in excess of that fixed by the freight Acts of 1907 and the said Passenger Act, as well as penalties under the abandoned Act of 1905.

As to the said contentions, your orator respectfully submits:

(a) Such view, if adopted, would result in a multiplicity of suits, the harassment of your orator, and tedious and expensive litigation, because if an injunction be not herein granted, and said acts be not complied with, many suits and prosecutions will be brought and many fines and penalties imposed and no opportunity will be afforded to your orator to present its claim of the unconstitutionality of said act and the confiscatory nature of the rates fixed. Such an inquiry involves the examination of long and tedious accounts, the

study of books and papers and an expert knowledge of the trier of fact, none of which could be properly had in the many trials to be had in a court of law to enforce the penalties. Hence the result would be pending the inquiry, your orator would be required to put in and enforce said rates to its irreparable damage, because it would be compelled, pending the litigation, to carry traffic at the reduced rates with no practicable way of recovering the difference between the rates now charged and as so reduced.

(*b*) The real purpose of the original bill was to determine whether that portion of the property of your orator devoted to state business could, if the Act of 1907 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory. Upon the trial of the three cases heard by the special master, such was the theory adopted by both parties, and the proofs were by both of them directed to that end. In view of this situation, it is respectfully submitted that the full determination of all questions of rates in the pending cases can not be defeated or impaired by the repeal by the state legislature of the particular act questioned by the original bill and the passage of another and different act in such
91 form as to prevent any adequate relief from a court of equity and to remit a complainant to a defense in numberless actions of law to recover penalties. But if the rights of the parties should be ascertained by a court of equity, this can be done adequately through the injunctive process, surrounded and controlled by such conditions as may be proper and just in the premises.

(*c*) It would be unjust and inequitable to permit officers of the state to claim that the validity of an act alleged to be confiscatory in its nature should be determined in a way other than would afford a full and fair hearing, which can only be by the processes of a court of equity. In order that there may be the fullest and fairest hearing of the controversy, your orator consents that any state officer, or any private person or corporation may appear herein and show, if they can, why the rates fixed in the acts aforesaid are lawful, reasonable or enforcible, and that the court may make any reasonable order to protect the public and speed the hearing.

(*d*) Each of the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney General, as stated in the original bill, applies to the Acts of 1907 and the Passenger Act aforesaid, so that even as an original bill, this proceeding could be maintained.

(*e*) The constitution of the state provides that all penalties such as are attempted to be prescribed for the violation of the acts herein mentioned go to the school-fund of the various counties, and the statutes of the state impose the special duty of collecting the same and preserving and investing the proceeds thereof, upon the county court and the treasurers of the respective counties of the state. Joseph M. Patterson, Charles E. Moss and George Dodd are the judges of the county, and Arthur C. Warner is treasurer, and each is a resident
and citizen of the county of Jackson, state of Missouri
92 through which the line of your orator passes, and from and to which there is transported a very large part of the state

and passenger traffic, the maximum rates for carriage of which are fixed by said Acts of 1907 and said Passenger Act. Each of said judges and said treasurer is hereby made a defendant. Each proposes and intends and will, unless restrained herein, seek to enforce and collect the penalties provided for in the said acts. In view of the fact that the line of your orator's road is not confined to one county, it is inconvenient, impracticable, expensive, and hence, unnecessary to make the county judges and the treasurer of each county parties hereto, but such as are named can be, and are sued as a class so that others similarly situated may, if they desire, appear herein and be heard upon their own behalf or through those now made parties, or, if necessary, be brought in by process of court and required to make defense.

(*f*) Thomas F. Van Natta and Vinton Pike are citizens and residents of Buchanan county, Missouri, who constantly travel over your orator's road, who have demanded and supported the passage of the Passenger Act aforesaid, and threaten to and will seek to enforce its provisions unless the rates therein fixed are established and put in force. They are hereby made defendants, and they represent a class of passengers and travelers so numerous that it is impracticable to join them all, and those named are made defendants herein for the purpose of determining, as against your orator, the rights of the entire traveling public under the said Passenger Act.

12. The rates fixed by each the said Acts of 1907 and said Passenger Act and as a whole are so unreasonable and confiscatory that a compliance therewith will force an unreasonable reduction and confiscation of your orator's entire revenue contrary to the provisions of the fourteenth amendment to the constitution of the United
93 States and provisions of the constitution. Besides this, to enforce the rates so fixed in any of said acts would necessarily affect the interstate rates upon the same commodities. Owing to the peculiar geographical location of the state of Missouri, the state rates necessarily affect all interstate rates upon the same commodities and travel and this results as a practical and unavoidable matter in the conduct of business affairs, the location of markets, business houses, the extent of territorial distribution from the various cities in the state and the necessities of travel. In addition to this some of the chief lines of railroad in Missouri, in running to and from points therein, pass out of the state so as to make any transportation between such points interstate commerce. Hence when a state rate between such points when lines wholly within the state is fixed lower than the interstate rate the companies whose transportation is interstate must meet that rate or carry none of the traffic. Such traffic constitutes a very substantial portion of the entire state traffic. Congress has attempted to legislate upon the subject of interstate rates, and since, as a matter of fact, none of said rates can be enforced without affecting interstate rates, all of the said legislative acts are unconstitutional and void and of no effect and violative of section 8, article 1 of the Constitution of the United States.

In consideration whereof, and forasmuch as your orator is remediless in the premises and by the strict rules of the common law can

only have relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays that: (1) Each of the said Acts of the Legislature of Missouri of 1907, herein set forth, including said Passenger Act, be declared unconstitutional, unenforcible and not binding upon your orator. (2) All the relief asked in the original bill as to the Act of 1905 be granted as to the said Acts of 1907. (3) The temporary injunction heretofore issued herein be extended against the defendants to the original and to this bill so as to cover and include any claim or right under
94 or by virtue of any of said freight Acts of 1907 and said Passenger Act and be made permanent. (4) Your orator have such other and further relief as is just and equitable.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States, issuing out of and under the seal of this honorable court, directed to each of the said defendants, including each of those hereby and herein made a party defendant, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court then and there to answer, but not under oath, an answer under oath being expressly waived, all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray, etc

O. M. SPENCER,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Buchanan, ss:

I, Alfred L. West, upon oath, say that I am Assistant General Freight Agent of complainant in above entitled Bill, and as such am familiar with the traffic operations of said company, and all the matters and things mentioned in the said bill which I have read. I know the contents thereof and same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

ALFRED L. WEST.

Subscribed and sworn to before me this 12th day of June, 1907. My commission expires August 27, 1908.

[SEAL.] RUDOLF PHILDINS,
Notary Public.

95 Afterwards, to wit, on the 25th day of June, 1907, a Subpœna in Chancery was issued.

Afterwards, to wit, on the 15th day of July, 1907, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause coming for hearing this July 15th, 1907, leave is hereby given to complainant to file an Amendment to Complainant's Bill of Complaint. The application for a temporary injunction against Herbert S. Hadley, Attorney General of the State of Missouri, from prosecuting the suit in the state court which he has instituted against the complainant is continued until the expiration of the ninety days tests heretofore ordered, unless the court should hereafter set the same down for hearing at an earlier date.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 16th day of July, 1907, the following Acknowledgment of service of Subpœna by Railroad Commissioners including H. R. Oglesby, Herbert S. Hadley, Attorney General, Charles M. Daily, Wm. F. Davis and James S. Robb was filed:

96 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

HERBERT S HADLEY,
Attorney General.
Solicitors for Railroad Commissioners Including H. R. Oglesby, Herbert S. Hadley, Attorney General, and Charles M. Daily, William Davis, and James S. Robb.

Afterwards, to wit, on the 16th day of July, 1907, the Acknowledgment of Subpœna by Thomas F. McNatta & Vinton Pike was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

97 *Acknowledgment of Service of Subpœna.*

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

THOS. F. VAN NATTA.
VINTON PIKE.

Afterwards, to wit on the 16th day of July, 1907, an Amendment to Complainant's Bill of Complaint was filed. Said Amendment to Complainant's Bill of Complaint is in words and figures as follows:

98 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Amendment to Complainant's Bill of Complaint.

The complainant, by leave of court, presents this its amendment to the bills heretofore filed herein, and respectfully shows to the court that it desires to, and does hereby present the matters and things hereinafter set forth, as paragraphs 13, 14, 15, 16, 17, 18, 19, 20 and 21, of the amended and supplemental bill heretofore filed herein, to be inserted therein immediately following paragraph 12 and preceding the prayer thereof. Thereupon complainant avers:

13. It hereby refers to the original and to the amended and supplemental bills herein, with the same force and effect as if copied herein.

14. Conceiving, and the defendants insisting, that an additional amended and supplemental bill should only be filed after notice,

and upon order of court, and there being no judge of the court within the district at the time, the complainant filed herein, on June 11th, 1907, its written application for leave to file an amended and supplemental bill, reference to which application is made the
99 same as if copied herein. On the same day, there was served upon counsel for defendants in the original bill and accepted by them, a written notice, together with a copy of the form of the said amended and supplemental bill, which notice recited that the application to file same, and for a temporary injunction would be presented to the court upon June 14, 1907, at the opening of the court at ten o'clock a. m. Said notice, the acceptance and evidence of service thereof, and form of bill, are upon file and are hereby referred to with the same force and effect as if set out herein. On June 13, 1907, at ten o'clock a. m., there then being a judge of the court within this district, and court being open, complainant presented and asked, pending a hearing of the application to file its amended and supplemental bill the general form of which was then submitted to the court, the right to temporarily file same, and for a restraining order, whereupon the court made an order entered herein upon June 13, 1907, of its own motion in the interests of the public and of all parties, maintaining the *status quo* pending the hearing, and restraining complainant from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill, and from complying with said acts, reference to said order is now made as fully as if copied herein.

15. Afterwards, on June 14, 1907, Herbert S. Hadley, Attorney General of the State of Missouri, and one of the defendants herein, by his counsel, in flagrant disregard and contempt of the jurisdiction of this court, filed in the circuit court of Kansas City, Missouri, his two petitions in equity in the name of the state at his relation as Attorney General, against this complainant, one asking that the court by mandatory injunction require complainant to put in force the maximum freight rates provided by the said legislative acts of 1907 mentioned in the amended and supplemental bill, and to comply with said acts, and the other as asking the same relief as to the rates fixed by the Passenger Act of 1907. And at his solicitation,
100 the judge of said state court did, in each of said cases, the same day, without notice, issue its restraining order returnable upon the 18th day of June, 1907, requiring the forthwith doing of such acts by this complainant.

Complainant asks leave to produce upon the hearing of this petition, certified copies of said proceedings in the state court, and refer to them as fully as if copied herein.

16. Thereafter at the time fixed in said notice, and upon June 14, 1907, at ten o'clock a. m., there was presented to this court the applications of complainant for leave to file said amended and supplemental bill and for a temporary injunction, and defendants asked a continuance of the hearing for one day, which the court granted, and upon its own motion ordered that said amended and supplemental bill should be deposited with the clerk (which was then and there done), that in the interest of the public and all parties the *status quo*

should be maintained, and that complainant in the meantime and until the further order of court should be restrained from putting in force the maximum freight and passenger rates fixed by the legislative acts of 1907 mentioned in the said bill, and from complying with said acts. A reference to the said order is now made with the same force and effect as if copied herein. In the meantime the said restraining orders from the state court were served upon complainant. Thereafter, upon June 15, 1907, the said applications were by the counsel for the respective parties and by this court, taken under advisement.

17. Thereafter upon June 17, 1907, this court made and entered an order which, omitting title, is in words and figures as follows:

Order.

"This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing process shall be issued so that if the court
101 hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of the court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction heretofore issued as to and in connection with the act of 1905. By consent of the complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion shall remain in force until June 19th, 1907, at 6 o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power, upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this

case, the complainant shall preserve and keep in existence its way-bills for state freight.

SMITH McPHERSON, *Judge.*"

Accordingly said bills were forthwith marked filed as of June 11, 1907, as in and by said order provided. Subpoenas have been duly issued as in and by said order provided, and served upon most of the defendants, and as to the others are in the marshal's hands for service and not yet returned, and complainant is not yet advised as to whether actual personal service has been had.

18. Thereafter upon June 18, 1907, the circuit court of Jackson County, Missouri, upon the application of the said Attorney General entered an order dismissing the case mentioned in paragraph 15 hereof which was filed against this complainant for a mandatory injunction to require it to put in force the maximum freight rates provided by the said legislative acts of 1907, and upon the same day the same court, upon the application of the said Attorney General, entered an order setting aside the restraining order issued in the case mentioned in the same paragraph to require it to put in force the maximum passenger rates fixed by the legislative
102 act of 1907 aforesaid, but did not dismiss the case, the Attorney General insisting that it should remain pending. He now threatens to and he will, unless enjoined herein, proceed with the trial and prosecution of the same on and after September 20, 1907, at the expiration of the ninety day test mentioned in the order hereinbefore set out.

19. The said state court has no jurisdiction in the premises and has no right or power to compel complainant by injunction to put in force the maximum passenger rates aforesaid, and any attempt so to do would deny to complainant the protection accorded to it by the fourteenth amendment to the constitution of the United States, which it now claims. Such attempt to oust this court of its jurisdiction, is in contempt thereof, and as to it was and is futile.

20. With the exception hereinafter stated, the facts alleged herein in paragraphs 13 to 18 inclusive, are true as to each of the following railway companies in the state of Missouri: St. Louis & San Francisco; Atchison, Topeka & Santa Fe; St. Louis Southwestern; Chicago, Rock Island & Pacific; St. Louis, Kansas City & Colorado; Kansas City Southern; St. Louis & Hannibal; Missouri Pacific; St. Louis Iron Mountain & Southern; Missouri, Kansas & Texas; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; Wabash; St. Joseph & Grand Island; Kansas City, Clinton & Springfield; Chicago Great Western; Chicago, Milwaukee & St. Paul, and Chicago & Alton. Each of said companies had at the same time filed in this court bills similar in nature to the original bill herein to enjoin the enforcement of the Acts of 1905, in which temporary injunctions had been issued and which cases are still pending and undetermined. Said exception is that the cases in the state court mentioned in paragraph 15 hereof against the St. Louis & San Francisco Railroad Company; St. Louis Southwestern Railway Company; St. Louis, Kansas City & Colorado Railway Company; St. Louis & Hannibal Railway Com-

pany; Missouri Pacific Railway Company; St. Louis Iron Mountain & Southern Railway Company; Missouri, Kansas &
103 Texas Railway Company and the Wabash Railroad Company, were filed in the circuit court of St. Louis, Missouri, while those against the other companies were filed in the circuit court of Jackson County, Missouri, at Kansas City. With this exception, similar action to that herein averred was taken in each case pending in this court, and the Attorney General threatens to and unless restrained will, proceed to prosecute each of said cases in the state courts as hereinbefore alleged. As to several of said complainants, the restraining orders from the state courts were served while the parties were presenting said applications upon June 14.

21. The passenger act of 1907, and each freight act of 1907, is void and of no effect for that it is an attempt to deprive complainant of its property without due process of law, and denies to complainant the equal protection of the law for reasons additional to those heretofore given, in that:

(*a*) Harsh and unreasonable penalties are provided with no provision for a test of the validity of the act, except at the risk of incurring such penalties which, if applied to each shipment of state freight or each passenger traveling on a state journey, over complainant's line, would within two years be greater than the value of complainant's whole property devoted to such use.

(*b*) It directly influences, affects and bears upon interstate freight and passenger traffic and fixes and regulates the same, for these reasons additional to those heretofore given:

(1) Many of the companies operate lines between the large cities of the state, some of which are wholly within the state and some of which go out of the state into Kansas and then back into this state. For illustration: The Kansas City, Clinton & Springfield Railway Company and the St. Louis & San Francisco Railroad Company are trunk lines between Kansas City, Missouri, and Springfield, Missouri, of substantially the same length; the line of the former be-
104 tween those points extending into and out of Kansas, so that all its carriage between said points is interstate; the other company has one line which in said course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri so that the carriage between said points upon one line is interstate and upon the other, state. Between Joplin and Kansas City there are three trunk lines of substantially the same length, that of the Missouri Pacific Railway Company between said points being wholly within the state and therefore all of its traffic is state, while the lines of the Kansas City Southern Railway Company and the St. Louis & San Francisco Railroad Company between said points extend into and out of Kansas, so that all the traffic between said points is interstate. Between St. Louis, Missouri, and St. Joseph, Missouri, there are two trunk lines, one of which is that of the Chicago, Burlington & Quincy Railway Company, which does not pass out of the state, so that the traffic between said points upon that line is wholly state, the other line is that of the Missouri Pacific Railway Company which in its course passes into and out of Kansas, so that the entire traffic between said points

is interstate. Between Kansas City, Missouri, and St. Joseph, Missouri, there are four trunk lines of substantially equal length, those of the Chicago, Burlington & Quincy Railway Company and the St. Joseph & Grand Island Railway Company are wholly within Missouri and all their traffic between said points is state; the lines of the Missouri Pacific Railway Company and of the Chicago Great Western Railway Company pass into and out of Kansas, so that the entire traffic thereon between said points is wholly interstate.

The said five cities are the largest in the state, their population, according to the census of 1900 being, St. Louis 575,238; Kansas City, 163,752; St. Joseph, 102,979; Joplin, 26,023; Springfield, 23,267.

The traffic between said cities upon said lines is a very substantial part of the traffic of said lines and of the state; the rates
105 between the points as aforesaid, both for passenger and freight, upon those lines which are interstate, have been for years fixed at a reasonable sum which is much higher than the rates fixed by any of the acts of the legislature in question. If any of the rates mentioned in said acts be put in force between said points upon lines wholly within the state, each of the companies operating the lines which are interstate will necessarily be compelled to lower their rates to the same figure or else, as a matter of fact, none of the traffic between said points will be carried over its line.

(3) The large cities and populous communities of the state are upon its eastern and western borders; the main course of traffic through the state is east and west; all the railroads in the state either operate lines extending into other states, or into the state of Kansas adjoining Missouri upon the west, and Illinois adjoining it upon the east, or else have joint freight and passenger traffic arrangements with lines running into those states for interstate through carriage both of freight and passengers.

So far, pending the test of the passenger rate ordered by this court, it has been demonstrated and is the fact, that the interstate passenger rates are much higher than those fixed by the passenger act of 1907, so that passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa from points of interstate trip into Missouri. For illustration a concrete case may be stated. From St. Louis to Kansas City is about 275 miles, thence to Topeka, Kansas, 67 miles, or a total of about 342 miles. The fair and reasonable interstate rate is and has for years been $9.50. A passenger starting from St. Louis may and does, buy his ticket to Kansas City, 275 miles at two cents a mile, or $5.50; he then buys his ticket to Topeka, 67 miles, at three cents a mile or $2.00, making a total from St. Louis to Topeka of $7.50, thus saving to himself
106 and losing to the carrier the difference between $9.50 and $7.50, or $2.00. This illustrates the situation upon other lines in the state, so that as a matter of fact it is true that in a state located as the state of Missouri is, the lowering of the rate upon the state traffic below that of the interstate necessarily affects, fixes and lowers the interstate rate in the manner herein stated. The same

thing is true of the freight traffic (though not in this respect in as pointed a degree), because the same practice can, is and will be adopted as to freight.

Wherefore, complainant prays, as heretofore prayed, and asks that the defendants be required to also answer this amendment, but an answer under oath is waived, and in addition to the relief heretofore asked, complainant asks that Herbert S. Hadley, Attorney General of the State of Missouri, be temporarily and permanently enjoined from prosecuting the said suit in the state court which he has instituted against the complainant.

And your orator will ever pray, etc.

J. W. BLYTHE,
O. M. SPENCER,
Solicitors for Complainant.
FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Buchanan, ss:

I, Alfred L. West upon oath say that I am Assistant General Freight Agent of complainant in the above entitled cause, and as such am familiar with the traffic questions of said company, and all the matters and things mentioned in said amendment which I have read; I know the contents thereof and the same are true of my own knowledge, except as to those stated upon information and belief, and as to those matters, I believe them to be true.

ALFRED L. WEST.

Subscribed and sworn to before me this first day of July, 1907.
My commission expires August 27, 1908.

[SEAL.] RUDOLF PHILDIUS,
Notary Public.

107 Afterwards, to wit, on the 31st day of July, 1907, the Acknowledgment of service of subpœna by Joseph M. Patterson, Charles E. Moss and George Dodd, County Judges and Arthur C. Warner, County Treasurer was filed. Said Acknowledgment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY,
Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

CHARLES W. GERMAN,
County Counselor, Solicitors for Joseph M. Patterson, Charles E. Moss, and George Dodd, County Judges Jackson County, Mo., and Arthur C. Warner, County Treasurer, Jackson County, Mo.

108 Afterwards, to wit, on the 2nd day of August, 1907, the Demurrer of Herbert S. Hadley, Attorney General to Amended Supplemental Bill of Complaint as Amended was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Demurrers of the Above-named Defendant, Herbert S. Hadley, Attorney General, to the Amended and Supplemental Bill of Complaint as Amended.

First. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such

cause as doth or ought to entitle it to the relief thereby sought and prayed for, from or against this defendant, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or su-plementary of the original bill in this case.

109 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. This defendant further demurs to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. This defendant further demurs to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. This defendant further demurs to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

110 Fifth. This defendant further demurs to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended—(*a*) the matters and things set forth in said

paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. This defendant further demurs to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit
111 Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. This defendant further demurs to the twenty-first paragraph of complainant's amended and supplemental bill of complaint as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill

herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

112 HERBERT S. HADLEY,
Attorney General,
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendant.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

Afterwards, to wit, on the 2nd day of August, 1907, the Demurrer of John A. Knott, et al. Railroad Commissioners to the Amended and Supplemental Bill of Complaint as Amended was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Demurrers of the Above-named Defendants, John A. Knott, Frank Wightman, and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Amended and Supplemental Bill of Complaint as Amended.

113 First. These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer show:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. These defendants further demur to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. These defendants further demur to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of

complaint, as amended, bcause (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the
114 original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatsoever.

Fourth. These defendants further demur to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatever.

Fifth. These defendants further demur to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a con-
115 clusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State Court.

Sixth. These defendants further demur to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a

new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. These defendants further demur to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original
116 bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

117 Afterwards, to wit, on the 2nd day of August, 1907, the Joint and Several Demurrer of J. M. Patterson, et al., Defendants to the original and Amended and Supplemental Bill & Amended to said Bill of Complaint was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Joseph M. Patterson, Charles E. Moss and George Dodd, Judges of the County Court of Jackson County, Missouri, and Arthur C. Warner, Treasurer of said County, Four of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to
118 make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the

amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf *and* most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

Afterwards, to wit, on the 2nd day of August, 1907, the Joint and Several Demurrer of Thomas F. Van Natta and Vinton Pike two of the Defendants herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to said Bill of Complaint was filed. Said Demurrer is in words and figures as follows:

119 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Thomas F. — Natta and Vinton Pike, Two of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill, and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint — be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of de-

murrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

120 FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

Afterwards, to wit, on the 2nd day of August, 1907 the Joint and Several Demurrer of Charles M. Daily, W. F. Davis and James Robb, to Complainant's Amended and Supplemental bill of Complaint, as amended was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Charles M. Daily, W. F. Davis, and James Robb, Three of the Defendants Herein, to Complainant's Amended and Supplemental Bill of Complaint as Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint, as amended, to be true in manner and form as the same are therein and thereby set forth and alleged, do demur thereto and for cause of demurrer show:

121 First. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for from or against these defendants, or to any relief whatsoever.

Second. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint, as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

122 Afterwards, to wit, on the 24th day of September, 1907, an Interlocutory Report of Special Master was filed.

And afterwards, to wit, on the 7th day of October, 1907 the said Interlocutory Report of said Special Master was refiled.

Said Interlocutory Report and the Order thereon is in words and figures as follows:

Circuit Court of the United States, Western Division of the Western District of Missouri.

MISSOURI PACIFIC RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO.
vs.
HERBERT S. HADLEY, Attorney General, et al.

WABASH RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Interlocutory Report of Special Master.

To the Honorable the Judges of said Court:

By reason of the premises hereinafter recited the undersigned Special Master to whom the above entitled and fifteen other like causes were referred by order of this Court bearing date March 5th, 1906, begs leave to present this special interlocutory report.

Having completed the taking of the evidence offered by the respective parties complainants and defendants in the three cases above named, these having been duly selected out of the eighteen for hearing in the first instance in pursuance of the order of reference, the same were set down for argument before the Master on June, 18th, 1907. On said date, however, the complainants in all the cases, having immediately prior thereto filed their amended and supplemental bills in this Court, further proceedings before the Master were, by consent of all parties suspended subject to be resumed on due notice.

123 As appears in said amended and supplemental bills and the several amendments thereof since filed, copies of all whereof have been duly received by the Master, there have been brought into

these cases various new and additional matters not embraced in the issues so referred.

And being in doubt as to whether the filing of such amended and supplemental bills do of necessity or should, pending proceedings in Court thereon, operate as a stay of further proceedings before him and of his report upon the matters and issues so referred, the Special Master therefore submits this Interlocutory Report and respectfully prays for such further orders and directions in the premises as to the Court may seem meet.

F. L. SCHOFIELD,
Special Master.

The amendments pending the hearing of the original bills of complaint had the effect, in law, of uniting the matters complained of in one bill. They, therefore, constitute but one bill of complaint, and all matters involved should be fully heard and the Master's findings should be embraced in a single report.

October 7th, 1907.

(Signed) JNO. F. PHILIPS, *Judge.*

Afterwards, to wit, on the 13th day of November, 1907, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

124 Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Order.

This cause coming on for hearing this November 13, 1907, it is by consent of parties ordered that leave of court be and is hereby granted to amend complainant's "Amendment to complain-t's bill of complaint," by erasing and striking out of paragraph 15 thereof the words "between 12 and 1 o'clock A. M." in lines 27 and 28 on page 2, and the words "at the said hours of" in lines 1 and 2 on page

3, and complainant's counsel are directed to forthwith make such erasure.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 10th day of April, 1908, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Order.

This cause came on for hearing this 10th day of April, 1908, upon the demurrers herein filed. The parties appeared by their respective counsel, and the court, after argument, being fully advised in the premises, overrules said demurrers.

(Signed) SMITH McPHERSON, *Judge.*

125 Afterwards, to wit on the 12th day of May 1908, the answer of Herbert S. Hadley, Attorney General, to the complainant's Amended and Supplemental Bill and the Amendment thereto was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney-General of the State of Missouri, et al., Defendants.

Answer of Herbert S. Hadley, Attorney-General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This defendant now, and at all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as he is advised is material or necessary to make answer to, answering says:

This defendant admits Paragraphs 1, 2, 3 and 4 of the Amended and Supplemental Bill.

This defendant denies that the Governor of the State, in giving his written reasons for approving the Act of 1905, referred to or indicated that it was with some reluctance that he signed the same.

And this defendant denies that any acknowledgment was made of the invalidity of the Act of 1905, referred to in Paragraphs 5 and 6 of the Amended and Supplemental Bill; but he admits that the Legislature of the State of Missouri did pass an act, effective June 14, 1907, in words and figures as set forth in Paragraph 6 of said Amended and Supplemental Bill.

But this defendant denies that it was the purpose or the intention of the defendant herein to attempt to enforce all penalties which may accrue if the said acts are held to be illegal.

This defendant admits that the Legislature of Missouri in 1907 passed the two acts set forth in Paragraph 7 of said Amended and Supplemental Bill.

And this defendant denies that if the complainant should charge the maximum rates prescribed by the acts of the General Assembly of the State of Missouri enacted at its session in 1907, the total
126 gross receipts of the complainant from State traffic would be reduced in a very large sum, and denies that the said freight acts, or any of them, are violative of the provisions of the Constitution to the same extent as complainant has alleged with respect to the Act of 1905, or to any extent whatever.

And this defendant denies that the rates fixed by the Acts of 1907 are unreasonable and confiscatory, and less than the cost of the service.

And this defendant denies that the Governor of the State of Missouri in calling for the passage of said Act of 1907, and the Legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905, which they conceived had in this litigation been proved to be unreasonable and confiscatory, and could not be enforced.

And this defendant denies that the rates as finally fixed by the Acts of 1907 were not on such a basis as would return a reasonable and fair compensation to the complainant upon the value of that portion of its property devoted to such use.

And this defendant denies that if the laws in existence in 1905, relative to passenger fares, had remained in force, the freight rates, as fixed by said Acts of 1907, would be unreasonable or confiscatory, or that they would not give a just return upon the value of that portion of complainant's property devoted to said traffic.

This defendant denies that the Legislature of the State acted without any fixed or definite knowledge upon the subject of rates, or that they erroneously conceived that if the increase in freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates, and that thereby, in substance, they could legally overcome and offset any advantage from an increase in freight rates by decreasing the maximum rates to be charged for said passenger traffic about 33⅓ per cent, and thus

while defeating pending litigation, the public, as a whole, would not be the loser.

This defendant denies that the result was that as part and parcel of one transaction and substantially as one law, and to accomplish the purposes alleged in the Amended and Supplemental Bill, there was passed, and the Governor approved, an act called the "Passenger Act," taking effect on June 14, 1907; but this defendant admits that the act relative to passenger rates, in words and figures as set forth in said Paragraph 9 of the Amended and Supplemental Bill, was enacted by the Legislature of the State of Missouri.

And this defendant denies that the said act regulating passenger rates is violative of any provision of the Constitution of the State of Missouri, or of the United States, and denies that it is subject to any of the objections made in the original bill to the Act of 1905, and denies that any of the facts alleged in the original bill as to why the Act of 1905 should be held to be void and action thereunder restrained, are true as to the Acts of 1907, or of the said passenger act.

This defendant denies that the said Passenger Act will reduce the earnings of the complainant from its passenger business in the practical and ordinary operation of the road, or otherwise, substantially one-third, or in any amount whatsoever.

The defendant has no knowledge or information or belief as to the aggregate amount of the State passenger earnings for the year 1906, and he denies that if the passenger act aforesaid had been applied thereto, State earnings would have been reduced in any sum whatever.

127 And this defendant denies that the value of that portion of complainant's property devoted to the carriage of State business, considered as a whole, or separately, as to the passenger business only, is such in any case that the reduction in rates by said Passenger Act would fail to make a reasonable return on such valuation, and denies that it would cause such business to be done at an actual loss.

This defendant denies that the said Passenger Act was passed for the avowed purpose of reducing the State passenger rates of complainant so as to off-set and overcome the supposed increase of freight rates made under the Act of 1907, and denies that the attempt was made to frame each act so as to avoid the injunctive relief in this or in each action heretofore instituted by railroad companies operating lines in Missouri.

And this defendant denies that if the injunction be not granted herein, the complainant is without means of adequate and proper relief, or would be denied due process of law. And this defendant alleges the fact to be that in the suit instituted by the State of Missouri to require by mandamus or mandatory injunction the observance of the laws of the said State, every defense, which the complainant herein and defendant in said suit may have, could be presented and considered, and the State of Missouri is contemplating no suit of any kind which would in any manner embarrass the complainant in the assertion of any rights which it may have.

This defendant says that it is not true that the special duties de-

volving upon the members of the Board of Railroad Commissioners and the Attorney-General, as stated in the original bill, apply to the Acts of 1907, and the Passenger Act aforesaid.

And this defendant denies that it is necessary or proper that the county judges and county treasurers of the State of Missouri should be made parties to this litigation, or that any private person should be drawn in as defendant thereto.

This defendant denies that the rates fixed by each, or any of the said Acts of 1907, or by said Passenger Act, or that the rates fixed by all of said acts, as a whole, are unreasonable or confiscatory, or that they will force an unreasonable reduction or confiscation of complainant's entire revenue, or of any part thereof, or that the said acts, or any of them, are in violation of the provisions of the Fourteenth Article of Amendment of the Constitution of the United States, or of any other provision of said Constitution.

And this defendant denies that to enforce the rates fixed by any of said acts would necessarily affect the interstate rates upon the same commodities. And this defendant alleges the fact to be that for many years past the complainant has voluntarily carried passengers in the State of Missouri, whose travel was wholly within the State, at the rate of two cents per mile. It has also carried many persons, other than employés of their own or other railroad companies, without exacting any compensation whatsoever, and the great bulk of passenger transportation within the State has been for many years past conducted at approximately two cents per mile, and that the charge of three cents exacted by complainant of any persons was an unjust, excessive and discriminatory charge upon such persons.

Referring to Subdivision (*b*) of Paragraph 11 of complainant's Amended and Supplemental Bill, this defendant says that the real purpose of the original Bill herein was to determine whether
128 that portion of the property of complainant devoted to State freight business, could, if the Act of 1905 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory, and that upon the trial of the three cases heard by the Special Master such was the theory adopted by both parties, and the proofs were by both of them directed to that end. And this defendant avers that the only legitimate and proper inquiry in this suit is as to the questions of law and fact arising upon the issues made by the original Bill and the Answer thereto, as to the validity of the said Act of 1905, and the results of its operation, and whether the same, if enforced, would be confiscatory and unremunerative to the complainant. Defendant asserts that the purpose of the original Bill ought not to be, and cannot, without disregard of the established rule of procedure of the Court of Chancery, be changed and perverted, to the end that the effect of the freight rate Act, or the passenger rate Act of 1907, shall be considered in this litigation, and that the only question proper to be considered or determined by this court in this action is the consequences to the complainant of the enforcement of the said Act of 1905.

This defendant denies that on the 11th day of June, 1907, the complainant filed herein a written application for leave to file an

Amended and Supplemental Bill, and he denies that upon the same day there was served upon the counsel for the defendants in the original Bill herein, and accepted by them, a written notice that a copy of the form of the said Amended and Supplemental Bill, reciting that application to file same and for a temporary injunction would be presented to this Court upon June 14, 1907, at the opening of said court at 10 a. m.

And he denies that two petitions in equity in the name and on behalf of the State of Missouri, referred to in Paragraph 15 of the said Amended and Supplemental Bill, as amended, were filed by him in disregard or in contempt of the jurisdiction of this Court; and he alleges the fact in that regard to be that on the said 14th day of June, A. D. 1907, and between the hours of 8 and 9 of the morning of the said day, he did, in the name and on behalf of the State of Missouri, by virtue of his office and authority as Attorney-General of the said State, file two petitions of the State of Missouri, the same being petitions in equity against the complainant herein, as defendant in the said suits, the one asking that the said complainant herein, defendant in the said suit, be required to comply with the maximum freight rates provided by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the other asking that the said complainant herein, defendant in the said suit, be required to comply with the passenger rates fixed by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the said petitions were filed in the Circuit Court of the State of Missouri in and for Jackson County at Kansas City, the same being a court of the State of Missouri of competent and general jurisdiction, and the said petitions were filed, and the suits instituted thereby, were pending, and summons, according to the laws of the State of Missouri, issued upon the said petitions and served upon the complainant herein, defendant therein, before the hour of 10 o'clock a. m. of said 14th day of June, 1907, and before any Amended or Supplemental Bill, or any amendment to the original Bill herein was filed by the complainant, or before any such amended or Supplemental Bill, or amendment to the original Bill was presented to this Court for consideration.

And this defendant alleges further that the said petition in equity, so as aforesaid filed by him in the Circuit Court of the City of St. Louis, relative to the freight rates, has been dismissed by him,
129 and is no longer pending, but that the said petition in equity, so as aforesaid filed by him in the Circuit Court of Jackson County, at Kansas City, relative to the passenger rates, is still pending and undetermined.

And this defendant admits that the said Circuit Court of Jackson County did on the said 14th day of June, A. D. 1907, issue its restraining order, returnable upon the 24th day of June, 1907, in the said suit in equity relative to the said passenger rates, requiring the complainant herein, and defendant therein, to comply with the law of the State of Missouri in that behalf.

This defendant admits that upon the 14th day of June, 1907, at 10 a. m., there were presented to this Court the application of com-

plainant for leave to file its Amended and Supplemental Bill, and for a temporary injunction, and that a continuance of the hearing of said application for one day was granted by the said court, and that this Court, upon its own motion, made the orders stated and referred to in Paragraph 16 of the said Amended and Supplemental Bill, as amended.

This defendant admits that upon June 17, 1907, this Court made and entered the order set forth in Paragraph 17 of the said Amended and Supplemental Bill, as amended.

And this defendant further admits that subpœnas have been issued, as by said order provided, and served upon this defendant.

This defendant admits that upon June 24, 1907, the said Circuit Court of Jackson County, upon the application of this defendant, entered an order dismissing the petition in equity of the State of Missouri theretofore filed by him relative to the freight rates prescribed by the laws of the State of Missouri, and that upon the same day, upon his application, the said court entered an order setting aside the restraining order previously issued by it in the suit in equity of the State of Missouri against this complainant, as defendant therein, relative to the passenger rates prescribed by the laws of the State of Missouri.

And this defendant avers that he made his application to set aside the said restraining order because this complainant had put into effect the passenger rates prescribed by the laws of the State of Missouri and was fully observing the same, and has continued so to do to the present time.

This defendant admits that he did not dismiss the said suit in equity, relative to the passenger rates, and has insisted that it should remain pending, and that it is his purpose to proceed therewith, if the complainant herein, defendant in the said suit, shall, at any time hereafter, cease to comply with the laws of the State of Missouri relative to passenger rates in said State.

And this defendant denies that the said State court has no jurisdiction in the premises, or that it has no right or power to compel complainant herein and defendant in the said suit, to put in force the passenger rates referred to, and he denies that any action by the said court would deny to complainant the protection accorded to it by the Fourteenth Amendment to the Constitution of the United States, and he alleges the fact in that regard to be that the said Circuit Court of Jackson County is a court of competent and general jurisdiction, having jurisdiction alike of the person of the complainant herein, defendant in the suit pending in the said Circuit Court of Jackson County, and that due process of law can and will be had by the complainant herein, defendant in the said suit, *in the said suit*, and any defense that it may have to the said suit in equity, so as aforesaid brought by the State of Missouri in said Circuit
130 Court of Jackson County, can and will be fully and fairly heard by said Circuit Court of Jackson County, and any rights which the complainant herein, defendant in the said suit, in said State court may have, will be fully conserved and protected.

This defendant denies that the facts alleged in Paragraphs 13 to 18,

inclusive, of the Amended and Supplemental Bill, as amended, are true as to each or any of the several railroad companies named in Paragraph 20 of the said Amended and Supplemental Bill, as amended, except as they correspond with the admission and averments hereinbefore set forth in this Answer.

This defendant admits that each of said companies had filed original bills in this Court similar to the original bill filed by the complainant herein.

This defendant also admits that the suits in equity brought by the State of Missouri were brought against the several railroad companies named in said Paragraph 20 either in the Circuit Court of Jackson county, or in the Circuit Court of the City of St. Louis, as in said paragraph stated.

And this defendant admits that it is his purpose to prosecute the said suits in equity, so brought by the State of Missouri in its said courts, in relation to the passenger rates, in the event that the said companies, defendants in said suits, shall fail to continue in observance of the passenger rates prescribed by the laws of the State of Missouri.

And this defendant denies that as to any of the complainants in the suits pending in the Circuit Court of the United States, defendants to the suits brought by the State of Missouri, restraining orders from the said State courts were served in the court room of this Court while the said parties, or any of them, were presenting applications to this Court upon June 14, 1907, but, on the contrary, this defendant alleges the fact to be in that regard that the said restraining orders were all served upon the proper officers of the said companies at their respective offices.

And this defendant denies that the said passenger Act of 1907, and that each or any of the freight acts of the State of Missouri of 1907, is void and of no effect, for the reason that it is an attempt to deprive complainant of its property without due process of law, or denies the complainant the equal protection of the law, and he alleges the fact in that regard to be that the said passenger act of 1907 is a reasonable and proper regulation of passenger rates in the State of Missouri, and that each of said freight acts of 1907 is a reasonable and proper regulation of rates for the transportation of freight; and that the said rates so prescribed by the said several acts of the General Assembly of the State of Missouri, and each of them, prescribe fair, proper and remunerative rates for the service to which the said acts severally relate.

And this defendant denies that the penalties provided by the said acts for a violation of them are harsh and unreasonable, or that they could in anywise be made burdensome, except through a persistent and continued disregard of the law by the said complainant.

This defendant denies that the said acts, or any of them, influence, affect or bear upon interstate freight and passenger traffic, or that they, or any of them, fix and regulate interstate freight and passenger traffic.

As to whether the Kansas City, Clinton & Springfield Railway Company, and the St. Louis & San Francisco Railroad Company,

between Kansas City and Springfield, are of substantially the same length, or as to whether the line of the former between those
131 points extending into and out of Kansas, or whether all its carriage between said points is interstate, or whether the other company has one line which in its course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri, or whether the carriage between said points upon one line is interstate and upon the other state; or whether between Joplin and Kansas City there are three trunk lines of substantially the same length, some of which are within the State, and some of which are without the State, or whether all of the traffic on some of said lines between Joplin and Kansas City is state, and on the other of said lines, between said points, is interstate; or whether between St. Louis and St. Joseph, Missouri, the line of the Chicago, Burlington & Quincy Railroad Company does not pass out of the State, or whether the traffic on said road between said points on said line is wholly State; or whether the line of the Missouri Pacific Railway Company between said St. Louis and St. Joseph in its course passes into and out of the state of Kansas, or whether the entire traffic upon said railway between said points is interstate; or whether between Kansas City and St. Joseph, Missouri, there are four trunk lines of substantially equal length, some of which are wholly within Missouri, and upon some of which all their traffic between said points is State, or whether the lines of some of them pass into and out of Kansas, or the entire traffic upon them, between said points, is wholly interstate, this defendant has no knowledge, information or belief.

This defendant admits that some of the large and populous communities of the State are upon its eastern and western borders. He admits that the main course of part of the traffic through the State is east and west. He has no knowledge, information or belief as to whether all of the railroads in the State either operate lines extending into other states, or into the state of Kansas or Illinois, or whether any of them have joint freight and passenger traffic arrangements with lines running into those states, or interstate carriage for freight and passengers.

As to whether the interstate passenger rates are higher than those fixed by the passenger act of 1907, or whether passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa, this defendant has no knowledge, information or belief.

As to what the interstate rate from St. Louis to Topeka, Kansas, is, or has been, this defendant has no knowledge, information or belief; or as to whether a passenger starting from St. Louis to Topeka buys his ticket in the manner stated in the Amended and Supplemental Bill, as amended.

He denies that the lowering of the State rate for the transportation of passengers necessarily affects, fixes or lowers the interstate passenger rate, and he denies that the same is true of the freight traffic.

This defendant denies that the complainant is entitled to any relief

whatever against this defendant, without this, that any other matter, cause or thing in the complainant's Amended and Supplemental Bill and the amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver,
132 maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney-General,
JOHN KENNISH,
Assistant Attorney-General,
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.
O. M. SPENCER,
FRANK HAGERMAN,
Solicitors for Complainant.

133 Afterwards to-wit, on the 12th day of May, 1908 the answer of Frank Wightman and H. R. Oglesby, Railroad Commissioners to the Amended and Supplemental Bill and the Amendment thereto was filed. Said answer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney-General of the State of Missouri, et al., Defendants.

The Joint Answer of the Defendants John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

These defendants now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as they are advised is material or necessary to make answer to, answering say:

That they do hereby adopt as their Answer herein the answer of

Herbert S. Hadley, Attorney-General of the State of Missouri, and all and singular the statements and averments thereof as fully as if the same were repeated herein, and they ask that the said Answer be taken in all respects as the Answer of them and of each of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that
134 any other matter, cause or thing in the complainant's amended and supplemental bill and the amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, or any of thm; to each of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney-General,
JOHN KENNISH,
Ass't Attorney-General,
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.
O. M. SPENCER,
FRANK HAGERMAN,
Solicitors for Complainant.

135 Afterwards, towit, on the 1st day of June, 1908, the Replication to the Answer of John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners was filed. Said Replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Joint Answer of John A. Knott, Frank Wightman, and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold

errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

E. M. SHELTON,
FRANK HAGERMAN,
O. M. SPENCER,
Solicitors for Complainant.

J. M. BLYTHE,
Of Counsel.

136 Afterwards, to wit, on the 1st day of June, 1908 the Replication to the Answer of Herbert S. Hadley, Attorney General was filed. Said Replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to

aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

E. M. SHELTON,
FRANK HAGERMAN,
O. M. SPENCER,
Solicitors for Complainant.

J. W. BLYTHE,
Of Counsel.

137 Afterwards, to wit, on the 13th day of June, 1905, an affidavit was filed. Said affidavit is in words and figures as follows:

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Wharton, being first duly sworn, says that he is Manager of the Saint Louis Office of Haskins & Sells, Certified Public Accountants, and has been for the past three years; that the firm of Haskins & Sells has been employed by the State of Missouri for the past two years as expert accountants in connection with the Maximum Freight Rate Litigation and the Passenger Rate Litigation; and that as Manager of the Saint Louis Office, this affiant has been connected with all of said work and is familiar therewith and with the length of time required for such work; that he was asked by the Attorney General on the 9th day of June, 1908 to come to Jefferson City for the purpose of making an examination of statements filed on that date by the following named railroads:

Missouri Pacific Railway Company,
Missouri, Kansas & Texas Railway System,
Chicago, Great Western Railway Company,
Chicago, Rock Island & Pacific Railway Company,
St. Louis & San Francisco Railroad Company,
St. Louis Southwestern Railway Company,
Chicago & Alton Railroad Company,
St. Joseph & Grand Island Railway Company,
Kansas City, Clinton & Springfield Railway Company,
Atchison, Topeka & Santa Fe Railway Company.

Such examination to be made in order to determine the length of time necessary for the verification of the reports submitted by the aforesaid railroad companies and for the preparation of reports in relation thereto; that on the 10th day of June, 1908, this affiant went to Jefferson City for the purpose indicated; that he then received from Attorney General Hadley the statements referred to, and more particularly described in Exhibits "A" to "J" hereto attached and made a part of this affidavit; Further, that in

138 order to properly pass upon the reports referred to, it will be necessary, First, to verify the clerical accuracy of the figures themselves; Second, to verify the correctness of the comparisons made where there have been such comparisons; and where no comparisons have been made, it will be necessary to prepare, or have prepared proper comparative statements; Third, to verify the correctness of the division of expenses between freight and passenger business and between State and Inter-State business; and Fourth, it will be

necessary to compare the method used in dividing expenses with the method by which such expenses were divided by the Missouri Pacific, Burlington and Wabash Railroads in the testimony already heard in the Maximum Freight Rate cases. In addition to this, it will be necessary to secure information in other states, where there has been no change in Passenger Rates during the past two years, as to the effect on Passenger earnings of the business depression, which began about the middle of October, 1907. It will also be necessary to secure from other states where the two cent passenger law has been in effect for some time, information showing the effect of the operation of the law on the earnings of the railroad companies.

In view of the amount of work above outlined that it will be necessary to do in connection with the statements hereinbefore referred to, this affiant believes that it will require the services of four or five experienced accountants for about three months to make the necessary verifications, prepare the necessary statistics, and place in proper form all such matter for the information of the Court.

T. F. WHARTON.

Subscribed and Sworn to before me this 11th day of June, 1908.

[SEAL.] FRANK WELLER,
Notary Public, City of St. Louis, Mo.

Commission expires Jan'y 14, 1911.

NOTE.—In the attached exhibits, the word "State" is used to indicate "Intra-State" business.

139 Missouri Pacific Railway Company.

Statements showing Passenger earnings by months for the six months ended December 31, 1907 and 1906, divided between State and Inter-State, with expenses for the periods named; also reports showing freight earnings and expenses for the same periods.

Method of dividing expenses and charges between freight and passenger, and State and Inter-State business is not shown.

Summary of Intra-State Passenger Business Only as Shown by Statements for the Six Months Ended December 31.

	1907.	1906.	Increase.
July to October.....	$580,056.65	$564,593.97	$15,462.68
November and December.	218,420.34	245,212.35	26,792.01+
Total	$798,476.99	$809,806.32	$11,329.33+
Operating Expenses.....	728,676.35	664,730.09	63,946.26
Net Earnings ...	$69,800.64	$145,076.23	$75,275.59+
Charges, *not* Including Interest	23,870.87	8,582.45	32,453.32
Available for Interest and Dividends	$45,929.77	$153,658.68	$107,728.91+

+ Decrease.

Exhibit "A."

140 Missouri, Kansas & Texas Railway System.

Various monthly statements of Passenger and Freight Earnings and Expenses for the period from June 19 to December 31, 1907, with statements by months for the period from June 19 to September 18, 1907 and 1906.

State and Inter-State business is not separated in reports.

Method of dividing expenses between freight and passenger business is not shown.

Summary of Passenger Earnings, Expenses, and Charges, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Increase.
Revenue	$365,573.83	$318,861.06	$46,712.77
Operating Expenses	235,619.96	225,148.53	10,471.43
Net Earnings	$129,953.87	$93,712.53	$36,241.34
Taxes and Rentals	25,381.17	27,261.31	1,880.14+
Available for Interest and Dividends	$104,572.70	$66,451.22	$38,121.48

+ Decrease.

Exhibit "B."

141 Chicago Great Western Railway Company.

Statements (Supposed to be filed by this Company) showing Passenger earnings only, by months, for the periods from June 19 to September 18, 1907, and 1906, and also for the three months ended September 30, 1907 and 1906, divided between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Decrease.
Intra-State	$12,568.23	$14,604.75	$2,036.52
Missouri to Other States	19,423.07	21,753.31	2,330.24
Other States to Missouri	20,297.69	18,783.71	1,513.98+
Other States through Missouri	1,225.86	1,047.64	178.22+
Between Points in Missouri through Kansas	4,181.53	4,292.36	110.83
Total	$57,696.38	$60,481.77	$2,785.39

+ Increase.

Exhibit "C."

142 Chicago, Rock Island & Pacific Railway Company.

Statement (Tentative Figures Only) for period from June 19 (6 A. M.) to and including September 18, 1907 and 1906, of Passenger and Freight earnings, expenses and taxes.

Business is NOT Divided between State and Inter-State.
Method of dividing expenses is not given.

Summary of Passenger Earnings, Expenses, and Taxes, as Shown by Statement, for the Period Mentioned Above.

	1907.	1906.	Increase.
Revenue	$271,240.36	$246,701.04	$24,539.32
Operating Expenses:			
Maintenance of Way and Structures	$113,162.23	$85,857.89	$27,304.34
Maintenance of Equipment	$48,251.58	37,947.48	10,304.10
Other Expenses	162,531.00	163,760.05	1,229.05+
Total	$323,944.81	$287,565.42	$36,379.39
Deficit from Operations.	$52,704.45	$40,864.38	$11,840.07
Taxes	5,411.14	3,946.88	1,464.26
Deficit before deducting Interest etc.	$58,115.59	$44,811.26	$13,304.33

+ Decrease.
Exhibit "D."

143 St. Louis & San Francisco Railroad Company.

Statements by months and in total for the three months ended September 30, 1907, of State and Inter-State Passenger and Freight earnings, expenses and charges.

Method of dividing expenses and charges between Freight and Passenger business is not shown: Expenses and Charges, and miscellaneous earnings, are divided between State and Inter-State business on the basis of the actual earnings of each class of business.

No comparisons are made with the same periods of the previous year, under three-cent law.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30, 1907.

Revenue	$718,992.65
Operating Expenses	599,298.01
Net Earnings	$119,694.64
Taxes and Rentals	24,104.07
Available for Interest and Dividends	$95,590.57

Exhibit "E."

144 St. Louis Southwestern Railway Company.

Statement for six months ended December 31, 1907, of State and Inter-State Passenger and Freight earnings, expenses and charges, with memorandum of Bases used in dividing revenues, expenses and charges between Freight and Passenger and State and Inter-State business.

Expenses are divided between Freight and Passenger business generally on basis of revenue train-miles. Expenses are divided between State and Inter-State business on basis of number of passengers one mile. Taxes are divided on basis of freight and passenger revenue of each class.

No comparisons are made with same period of previous year, under three cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statement, for the Six Months Ended December 31, 1907.

Revenue	$29,625.21
Operating Expenses	31,407.27
Loss from Operation	$1,782.06
Taxes and Sundry Charges (Less other Income)	1,224.67
Total Loss, before deducting Interest	$3,006.73

NOTE.—During the same period, the Inter-State business shows a profit, before deducting interest, of $12,589.49.

Exhibit "F."

145 Chicago & Alton Railroad Company.

Statements for the month of September, 1907, and the three months ended September 30, 1907, and for the month of October, 1907, and the four months ended October 31, 1907, of Passenger earnings, expenses and fixed charges, divided between Sate and Inter-State business.

Method of apportioning expenses and charges to Passenger business are not shown. The method of dividing expenses between State and Inter-State business is not shown; but it is evidently on basis of passenger miles; charges divided between State and Inter-State Passenger business on basis of passenger miles.

No comparisons are made with same periods of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statements, for Four Months Ended October 31, 1907.

Revenue	$193,822.87
Operating Expenses	116,267.44
Available for Interest and Charges	$77,555.43
Amount of Interest and Charges	62,283.85+
Surplus for the Period	$15,271.58

+Amount of Interest alone not given.

Exhibit "G."

146 St. Joseph & Grand Island Railway Company.

Statement of Passengers Carried and Revenue received, by months, for the six months ended December 31, 1907 and 1906, divided between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statement, for the Six Months Ended December 31.

	1907.	1906.	Decrease.
Intra-State	$20,101.43	$25,115.93	$5,014.50
Inter-State	9,718.42	11,384.51	1,666.09
Total	$29,819.85	$36,500.44	$6,680.59

Exhibit "H."

147 Kansas City, Clinton & Springfield Railway Company.

Statements of Passengers carried and Revenue Received, by months, with expenses charged to Passenger Traffic, for the period from June 19 to November 30, 1907 and 1906.

Expenses are not divided between State and Inter-State business. The method of apportioning expenses to Passenger business is not given.

Summary of Passenger Earnings and Expenses, as Shown by Statements, for the Periods Shown Above.

Earnings:	1907.	1906.	Increase.
Intra-State	$24,319.00	$26,159.57	$1,840.57+
Inter-State	22,171.38	22,043.20	128.18
Total	$46,490.38	$48,202.77	$1,712.39+
Operating Expenses	92,633.11	92,378.03	255.08
Deficit from Operations	$46,142.73	$44,175.26	$1,967.47

+Decrease.

Exhibit I.

148 Atchison, Topeka & Santa Fe Railway Company.

Statements for the months of July, August, and September, 1907 and 1906, showing Passenger and Freight business, with expenses of each, and statements for the three months ended September 30, 1907 and 1906, showing Passenger and Freight earnings, expenses and charges divided between State and Inter-State business.

Method of dividing expenses and charges between freight and passenger business is not shown. Expenses are divided between State and Inter-State business on basis of earnings of each class of business.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30.

	1907.	1906.	Increase.
Revenue from Passengers...	$56,329.47	$50,959.63	$5,369.84
Excess Baggage, Mail, Express, etc.	24,531.16	24,162.71	368.45
Total.....	$80,860.63	$75,122.34	$5,738.29
Operating Expenses:			
Maintenance of Way and Structures	$31,779.37	$28,871.00	$2,908.37
Maintenance of Equipment.	9,984.00	7,375.10	2,608.90
Other Expenses	28,706.04	27,955.42	750.62
Total.....	$70,469.41	$64,201.52	$6,267.89
Net Earnings	$10,391.22	$10,920.82	$529.60+
Taxes and Rentals	1,647.99	1,624.68	23.31
Available for Interest and Dividends	$8,743.23	$9,296.14	$552.91+

+Decrease.

Exhibit "J."

149 Afterwards, towit on the 13th day of June, 1908, the following Notice was filed:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANY
v.
HERBERT S. HADLEY, Attorney General, et al., being cases numbered 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003 and 3006.

Notice.

Complainants in above numbered cases will, upon June 13th, 1908, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, make application to the court to set down for hearing the applications for temporary injunctions therein pending.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice this June 8th, 1908.

HERBERT HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
F. W. LEHMANN,
Solicitors.

150 Afterwards, to wit, on the 13th day of June, 1908, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANY
v.
HERBERT S. HADLEY, Attorney General, et al., being cases numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Order.

Causes numbered 2988, 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003 and 3006 came on for hearing this June 13, 1908, upon the application of complainants to at once set down for hearing their applications for temporary injunctions. The parties appeared by counsel, the defendants insisting that such hearing be postponed for a period of ninety days, and the court being fully advised in the premises

Orders

1. The Special Master shall file herein so much of the testimony as has been taken in any of the 18 cases.

2. Orders on the applications to set down for hearing at once the motions for temporary injunctions are deferred for the present, and in lieu thereof by consent of counsel all of the 18 cases are set for final hearing the 5th day of October, 1908, or as soon thereafter as the court can hear the same upon such evidence as has been heretofore taken, and such further oral and documentary evidence as then may be offered under the 67th rule in equity as amended.

(Signed) SMITH McPHERSON, *Judge.*

151 Afterwards, to wit, on the 22nd day of June, 1908, the following Stipulation was filed:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Stipulation.

The parties hereto agree that the Chicago, Burlington & Quincy Railroad Company, having since filing of the amended and supplemental bill, by mutual consent cancelled its lease with the Chicago,

Burlington & Quincy Railway Company, it may be substituted as complainant herein, without the necessity of filing a new, amended or supplemental bill, with the same force and effect as if the original, amended and supplemental bills and replications had been filed in its name, the state not waiving, but expressly reserving every objection which could have been made to the jurisdiction, had the suit been continued in the name of the Railway Company, without any termination of the lease.

June 19, 1908.

FRANK HAGERMAN,
O. M. SPENCER,
Solicitors for Complainant,
HERBERT S. HADLEY,
Solicitor for Defendants, who have Entered Appearances.

Thereupon on Said June 22nd 1908, an order was made and entered of record in words and figures as follows:

152 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Order.

This cause came on for hearing this 20th day of June, 1908, upon the written stipulation of the parties of date June 19th, 1908, the court being fully advised in the premises and pursuant to the terms of said stipulation

Orders that the Chicago, Burlington & Quincy Railroad Company, having since filing of the amended and supplemental bill by mutual consent cancelled its lease with the Chicago, Burlington & Quincy Railway Company, may be and is hereby substituted as complainant herein, without the necessity of filing a new, amended, or supplemental bill, with the same force and effect as if the original amended and supplemental bills and replications had been filed in its name, the state not waiving, but expressly reserving every objection which could have been made to the jurisdiction had the suit been continued in the name of the Railway Company, without any termination of the lease.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 21st day of September, 1908, the Master's Return to Order of June 13, 1908, was filed. Said Master's return is in words and figures as follows:

153 Circuit Court of the United States, Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY

vs.

HERBERT S. HADLEY, Attorney General, et al.,

Also

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Master's Return to Order June 13, 1908, *with all Testimony Taken.*

To the Honorable the Judges of said Court:

In obedience to the order entered in the above mentioned cases, bearing date of June 13, 1908, the undersigned Special Master herewith returns all the testimony taken before him in the three cases in which testimony was taken, viz. the cases of the Missouri Pacific Railway Company, The Chicago, Burlington & Quincy Railway Company, and the Wabash Railroad Company, together with all the exhibits referred to in said testimony, and being all the testimony taken in any of the said eighteen cases.

Respectfully submitted,

F. L. SCHOFIELD,
Special Master.

Hannibal, Mo., September 18th, 1908.

153½ Afterwards, to wit, on the 5th day of October, 1908, the following order was filed and entered of record:

In the Circuit Court of the United States, Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

RAILROAD COMPANIES
against
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006, all in Equity in Said Court.

Orders.

These cases come on for further hearing this October 5th, 1908 pursuant to the orders in all said cases made June 13th, 1908.

And the Court orders that each all and every of said eighteen (18) cases be and the same are hereby continued until November ninth (9th) A. D. 1908 at ten o'clock A. M., at which time all of said cases will be called for trial, and the trial will then proceed from day to day until concluded. And said cases will be heard and decrees rendered on the evidence heretofore taken before the Special Master, and on such oral testimony and documentary evidence as may be offered by any of the parties to said cases pursuant to General Equity Rules 67 as amended. The evidence taken in any one of said cases shall be used in each, all and every of the other seventeen (17) cases in so far as the same will be pertinent or germane.

Said cases will be called and heard in the numerical order given said cases by the clerk; that is to say, the case with the lowest numerical number to be first heard, and the next lowest number next heard, and so on until all said cases are heard.

All agreements between any of the parties in any of said cases, whether such agreements are recited in orders of this Court or by the Special Master, or whether such agreements are otherwise in writing, or verbally made, are hereby cancelled and will not
154 be regarded by the Court, and future agreements if any will only be considered by the Court when reduced to writing and signed by the parties and filed with the clerk in said case or cases.

However, the orders made in said cases June 13th 1908 and the agreements therein recited are fully ratified and confirmed except only as to the change of date for hearing from October 5th, 1908 to November 9th, 1908.

And the applications for temporary injunction are continued until November 9th, 1908 or until such later time as said applications may be presented, and the Court may be able to hear the same.

Done in open court this October 5th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 14th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

MONDAY, *November* 9, *A. D.* 1908.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

This day come the parties by their solicitors, the complainant by W. F. Evans, Esq. and Frank Hagerman, Esq., and the defendants by the Honorable Herbert S. Hadley, F. H. Lehmann Esq., and Sanford B. Ladd, Esq. Thereupon this cause coming on regularly for final hearing, evidence on the part of complainant is begun and the same not being concluded at the hour of adjournment, further proceedings are portponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

155 Afterwards, to wit, on the 14th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

TUESDAY, *November* 10, 1908.

In Equity. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 14th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

WEDNESDAY, *November* 11, 1908.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

156 Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded

with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 14th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THURSDAY, *November* 12, 1908.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

157 Afterwards, to wit, on the 14th day of December, 1908, the following Order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

FRIDAY, *November* 13, 1908.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 14th day of November, 1908, the following Order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

SATURDAY, *November* 14, 1908.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

158 RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until Monday, December 14th.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 15th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Monday, December 14, 1908.

159 Afterwards, to wit, on the 16th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, Dec. 15, 1908.

Afterwards, to wit, on the 17th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

160 In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 16, 1908.

Afterwards, to wit, on the 18th day of December, 1908, the following Order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Thursday, December 17, 1908.

161 Afterwards, to wit, on the 19th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Friday, December 18, 1908.

Afterwards, to wit, on the 21st day of December, 1908, the following Order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

162 In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon evidence on the part of the complainant, St. Louis & San Francisco Railroad Co. is concluded and further proceedings are postponed until next Tuesday morning at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Saturday, December 19, 1908.

Afterwards, to wit, on the 22nd day of December, 1908, the following Order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of defendants is begun and

the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 22, 1908.

163 Afterwards, to wit, on the 23rd day of December, 1908, the following Order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon further evidence upon the part of the defendants is heard and the same not being concluded at the hour of adjournment, further proceedings are postponed until Monday, December 28, 1908, at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 23, 1908.

Afterwards, to wit, on the 28th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

164 In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 28, 1908.

Afterwards, to wit, on the 29th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

165 Afterwards, to wit, on the 30th day of December, 1909, Complainants' requests for finding of facts *was* filed. Said Requests are in words and figures as follows:

Complainants' Requests for Findings of Fact.

1. The complainants are the eighteen railroad corporations owning and operating lines of railway in Missouri, engaged generally in doing therein with the same property, the entire state and interstate railroad business. With the exception hereinafter stated as to the St. Louis & Hannibal and the Kansas City, Clinton & Springfield, they constitute great trunk lines of railroads, carrying in and through Missouri the commerce of the country, state and interstate, reaching and connecting various commercial centers like Chicago, St. Louis, Kansas City, Omaha, Denver, St. Paul, Memphis, New Orleans and Galveston. Some of them, like the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific operate through trans-state trains, running from Chicago to the Pacific Ocean. All operate, in connection with other roads at connecting points and large centers so as to carry all the traffic of the state, freight and passenger, not only that which is state but also that which is interstate, and that which is destined to and from other roads and other states. The interstate business may originate or terminate in the state, or in some instances both there originate and terminate, or it may pass through the state with origin and destination both outside thereof. The St. Louis & Hannibal Railway is located wholly within the state, extending from Hannibal, Missouri, through a valuable and populous part of the state, to a point upon the Wabash Railway and is the only one of the complainants, the line of which does not cross the state line. The Kansas City, Clinton & Springfield Railway extends from Olathe, Kansas, (a small town about 20 miles from Kansas City, Missouri) for a distance of about eleven miles to the state line from whence it runs through the southwestern part of the state, but not as in the case with the other railways reaching with its own trains any of the basing points or great commercial or market centers of the state.

166 2. The same properties, trains and facilities are necessarily used by each company in conducting both the state and interstate business. It would not be practicable to operate in any other way. If separate cars or trains were required to be operated for the state and interstate business or separate facilities used for each, no one of the complainants could for the business of any *of* all classes in this state pay operating expenses, the public would be greatly inconvenienced, and enormous investments would be required in order to meet changed conditions. It is absolutely essential to the safety, convenience and economy of passengers and shippers for the business to be conducted as it is, without any attempted separation in conducting upon the same trains and with the same facilities both the state and interstate business.

3. Missouri is peculiarly located so far as concerns the question whether the fixing a state rate directly affects an interstate rate.

The state is midway between the Great Lakes and the Gulf of Mexico, and midway between the Atlantic and Pacific Oceans. The vast quantities of traffic, and volumes of travel between the east and west and north and south necessarily cross the entire state. Two great rivers bound the state upon the east and west. Upon these rivers are located great markets and commercial centers. Those at Kansas City being the largest between the Mississippi River and the Rocky Mountains. All freight rates from the east to the west and vice versa are made up of a rate to and from these rivers plus the rate across the state. This has always been so and whatever the reason therefor, as a practical railway problem will always be so if intelligent, experienced and practical railway men are permitted to fix rates upon a fair, reasonable and intelligent basis. The river points, therefore, have become and are rate basing centers. Great cities and markets have been built up by reason of and upon the faith of this fact. At such points great railroad properties have been acquired and extensive terminals provided in view thereof. In many instances the railways there terminate. If a different method were adopted a chaotic condition would be created, business of these cities and markets would be seriously and unduly
167 disturbed and embarrassed and investments there made largely affected. The actual result is that the short line mileage across the state actually controls and fixes the freight rate by every other railway, no matter what the distance or points of origin and destination may be. From Hannibal to St. Joseph, Missouri, is 198 miles by the Chicago, Burlington & Quincy Railway. This is the shortest rail distance between the rivers. From St. Louis to St. Joseph it is at least 300 miles, to Kansas City 280 and upward. Whenever a freight rate per mile is fixed for the 198 miles, the short route between the rivers, the total rate between all Mississippi and Missouri River points must conform thereto even though the distance be 300 or more miles. This situation applies to every competitive point between the rivers of which there are many of magnitude and importance. The traffic between St. Louis and Missouri river points, both state and interstate, is enormous. Every railway carrying freight must be at the expense of carrying it from 280 to 300 or more miles, yet receive therefor a rate based upon a distance of 198 miles. Unless it should do so it would not be able to handle enough freight between river points to justify the running of trains. Unless the rates were so fixed no substantial business would be done between the river points because every shipper to or from the east would be compelled to ship by the short line. St. Louis merchants could not compete for western business. In the passenger traffic the universal rule is that the short line between any two stations fixes and establishes the rate. In other words, the rate being fixed per mile, the longer route will not be able to carry passengers between any two points if its total rate exceeds the short line rate. In actual railway operation the state line is wholly arbitrary. Unless the mileage rate is the same, passengers will, if the state rate be lower than the interstate, buy tickets or pay fare to a state line station and there provide themselves anew with tickets, thus

making an interstate journey partly state. Experience has demonstrated this to be noticeably true. In July and August 1907, when a two cent fare was in force in Missouri upon state business and three cents upon interstate this practice became quite general.

168 It became absolutely necessary as a practical railroad question to put in force the same rate for state and interstate travel; otherwise it would have become impossible to keep track of a large part of the interstate travel and a large unnecessary expense been incurred by the work imposed at the state line stations. For these and many other reasons shown by the evidence, including those mentioned in paragraph 4, it is a fact that no mileage state rate, for freight or passengers, extending across the state of Missouri, can be established which does not actually and immediately directly affect the interstate rate, not only in but out of the state. It therefore, must as a fact, be said that the rates fixed by the laws complained of in the bills, do directly and immediately affect and regulate interstate commerce.

4. Two of the great trunk lines in Missouri are the Missouri Pacific and the Chicago, Burlington & Quincy Railways. Both extend from St. Louis to St. Joseph,—the Burlington lines between these points are wholly within the state; those of the Missouri Pacific pass out of Missouri at Kansas City, into Kansas, leaving that state at Atchison, coming again into Missouri. All traffic over the Missouri Pacific from St. Louis to St. Joseph is interstate. If the state rate, freight or passenger, be lawfully fixed the Burlington must conform thereto on its St. Louis and St. Joseph business. When it so does this rate must be met by the Missouri Pacific or else the latter will get none of the business. This situation is applicable to all the Missouri Pacific business between St. Joseph and Kansas City and all points east thereof. The Burlington and other roads as direct and as connecting carriers compete therefor. A very large and substantial part of the business of the Missouri Pacific is carried from St. Joseph to Kansas City and St. Joseph and points between and is thus affected. The same situation exists as to other companies. The Chicago Great Western Railway between St. Joseph and Kansas City runs from Missouri, thence into Kansas, and back into Missouri, making the business interstate. The lines of the Burlington and St. Joseph & Grand Island companies between these points are wholly within the state. The lines of the St. Louis & San Francisco and Kansas City Southern companies between Kansas City and

169 Joplin and the great lead and zinc mining districts of Missouri, start from Kansas City, Missouri, extend into Kansas and thence back into Missouri, thus making the journey interstate. The Missouri Pacific line between these points is wholly state. The Missouri, Kansas & Texas also runs from Missouri into Kansas and back into Missouri, competing with lines wholly in the state. In each of these instances a very large and substantial part of the business of each of said companies originates and terminates in Missouri yet by passing in its journey out of the state is interstate. In each instance if the competing line wholly in the state is by state law compelled to lower its rate, those doing such interstate business must

likewise reduce their rates between the same state points or do none of the business. All the complainants have joint tariffs, with the others, doing one with the other, a through connecting business. The laws complained of in the bills do therefore directly affect and interfere with a substantial part of traffic of the state which is interstate commerce, originating and ending in the state, particularly much of that kind upon the lines of the Missouri Pacific, Chicago Great Western, St. Louis & San Francisco and Missouri, Kansas & Texas companies. The laws complained of are general in their nature, making neither classification nor exception. So by reason of the peculiar location of many of the large roads in Missouri a unique situation is presented whereby, wholly independent of the facts set forth in paragraph 3, state rates certainly directly and immediately affect interstate traffic both freight and passenger. So great an amount of interstate business is affected thereby that if it was permitted to be free from state regulation, and the other companies in the state refused to conform to the rates fixed by
170 the laws by the bills herein questioned, they as competitors, whether original or connecting carriers, would lose so much state business that they would be compelled to carry at an actual loss that which remained of that class of traffic.

5. Much difficulty in the cases has been obviated by complainants making up and delivering to defendants, from time to time, statements showing the earnings and expenses for certain periods, which seem to have been treated by the parties as sufficiently illustrative of the situation to enable a fair determination of the controversy to be had. Complainants have extended to defendants every facility, given them the fullest opportunity, and granted them every possible courtesy, so that any experts for defendant have had every opportunity to call for any figures and to make up any statement upon any theory desired. Inasmuch as the same periods of time, in the various statements submitted, were adopted by both parties, the findings as to each company will follow along the same line, and actually mean that such period should be considered as representative of the situation generally. Inasmuch as the freight act of 1907 covered the same commodities as the Acts of 1905 but allowed an increased earning, it follows as was conceded by defendants at the trial, if the freight act of 1907 was confiscatory, that of 1905 was likewise confiscatory but to a greater degree. It must therefore be said that the rates fixed by the laws complained of in the bills do, in fact, directly and immediately affect interstate rates and directly regulate a large and substantial part of interstate commerce of the state and interstate carriage, freight and passenger, upon the Missouri Pacific, Chicago & Great Western, St. Louis & San Francisco, Kansas City Southern and Missouri, Kansas & Texas Railways and their connecting carriers.

6. The earnings in a state, from state and interstate business, can be ascertained with a reasonable degree of certainty from the waybills, tickets and cash fares. The books and papers of complainants are and always have been so made and kept that it is a mere matter of expense, though considerable, and detail work, though

extensive, to make the ascertainments. The freight earnings consist of earnings from transportation and from miscellaneous
171 services, such as switching, demurrage, storage and track rentals. Passenger earnings are those from passenger fares and miscellaneous services, such, for instance, as mail, express and excess baggage.

7. No serious difference has arisen in the separate cases as to the ascertainment of the expense of doing the entire passenger, freight or miscellaneous business in the state. So, with a reasonable degree of certainty, and with little controversy, this division can be and has been made. Inasmuch as these expenses are incurred by the use of the same properties, car tracks and facilities, there is not and never has been any certain known fixed rule or method by which, to a mathematical certainty, these different expenses so separated can be divided, as between state and interstate business. The method to be adopted in making the division was the chief serious controversy at the trial. Complainants claim that the division should be upon the revenue basis, in which way there can in the first instance, be assigned to each class of business, freight, miscellaneous freight, passenger and miscellaneous passenger, or to all or any of them combined, a reasonable and fair amount as state and inter-state expenses respectively, to which should be added such sum as would represent the extra cost of doing state over interstate business. The defendants claim that the division should be, for freight, upon the ton-mile basis, and for passenger, upon the passenger-mile basis, and that miscellaneous freight earnings and expenses should be included in freight and miscellaneous passenger earnings in those of passenger. As the revenue proportion is, in most instances, nearly twice as much as the ton-mile proportion, the reason for the difference is apparent. By the revenue basis is meant assigning as expense of state business, of any particular kind or kinds, such proportion of the total expense in the state on that class of business as the earnings from that class of state business bears to all the earnings (state and interstate) from the same class; or, as often put, ascertain what proportion all expenses are of all earnings, and then multiply the state earnings of any class thereby, thus finding a sum which would equal the expenses to be there assigned. By the ton-
172 mile basis is meant the assignment to state freight expenses such proportion of all freight expense as the number of tons per mile of state freight bears to the total ton-miles of all freight hauled in the state. By the passenger-mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers (state and interstate) carried one mile.

Another method of division of freight expense is upon the basis of the number of tons carried, regardless of distance. In results there is little difference, as a division on this basis is practically the same as that which is shown by the revenue basis. Neither party has adopted it as a basis of division.

8. There being no method by which the division of expenses, as

between state and inter-state, can be made to a mathematical certainty, calculations have been made upon every reasonable basis, and a determination reached, in the light of all the evidence, of a reasonable sum, in money, which should be actually charged as the expense of doing each class of state business. To this should be added the extra cost of doing the state business. The sums hereinafter found were first actually ascertained by a division upon a revenue basis. Then, after considering all things, they were and are adopted as the proper sums to reasonably represent an actual fair apportionment of expenses as between state and inter-state business. Any apportionment of freight expenses, upon a ton mile basis would charge too small an amount as state expense. This would make necessary the use of a multiple of extra cost, large enough to make the sum total of state freight expense equal that hereinafter accurately found to reasonably represent the cost as it ought from the evidence to be found. Any apportionment of passenger expense, upon the passenger mile or any other basis which would not make the state passenger expense equal in dollars the sum hereinafter found, would be unfair and unjust.

9. All things considered, the evidence duly weighed, there being no abnormal feature, the cost of doing the different classes of state business, ascertained as between state and interstate, upon
173 a revenue basis, brings a result in dollars in Missouri which is fair just, reasonable and representative. That method of ascertainment is much better and more satisfactory than any other which has, by any one, been suggested. If the law be that some one theory must be adopted, then the revenue basis would be and is hereby accepted as correct. However, in these cases, although the ascertainment is actually made upon the revenue basis, the figures, when ascertained, have been considered in the light of all the facts and circumstances in evidence, and then in and of themselves and independently of their method of ascertainment, also adopted as fairly and justly representing the cost and expense of doing each class of state business.

10. There is an extra cost and expense of doing state over interstate business, both as to freight and passenger. This extra cost is as to each complainant, for freight, much in excess of fifty per cent. of all freight expense, and for passenger in excess of twenty-five per cent. of all passenger expense. While the extra cost is much in excess of these figures, yet, for the purpose of this case, they may, as to each complainant, be adopted as the minimum. How much more the extra cost is, need not be now determined because at the minimum figures thus fixed, the rates in question are, in view of the case, unreasonable and confiscatory. If the ton-mile method of apportionment of freight expenses were adopted, the multiple of extra cost of doing each class of state business would be fixed at such figures as would make the entire expense as increased, equal to that hereinafter found, because, the total amount as found, regardless of the method of finding same, being that which fairly represents the minimum actual cost and expense of doing such state business.

11. After ascertaining the cost of doing the different classes of state business, and deducting same from the earnings there should be and there is deducted from the state freight earnings of each complainant such sum as would equal its diminution of earnings of each complainant *such sum as would equal its diminution of earnings* upon the commodities covered by the act, if the rates thereon fixed thereby had been charged. This has been done as to each complainant.

174 In the case of each complainant, other than the St. Louis & Hannibal Railway Company, and Kansas City, Clinton & Springfield Railway Company, the earnings should be sufficient, in any event, to fully meet its proportion of the interest upon the bonded indebtedness, there being nothing out of the ordinary as to such indebtedness, and nothing to indicate that the property was unduly bonded. Such interest has been regularly paid for years and there is nothing to indicate any improper bonding The proportion of the property assignable to any of the state traffic, upon a revenue basis, is actually worth more than enough to justify such return. The proportions of the property of the St. Louis & Hannibal and the Kansas City Clinton & Springfield respectively assignable to any of the state traffic, are worth enough to justify some substantial return. However, irrespective of this finding and eliminating any question of interest, the rates in question are as hereinafter shown insufficient to make a fair and reasonable return upon the value of the portion of the property of each complainant devoted to the use.

13. Each class of business of each complainant should have assigned to it its fair proportion of the value of the entire property in the state as that upon which it is entitled to a return. Such a division hereafter made, is upon a revenue basis. The result reached thereby is so fair just and reasonable that they are, in view of all the facts, adopted, regardless of the method of ascertainment. There has been fixed a minimum valuation for the railway property in the state. The property is worth at least that much. There is and should be assigned to each class of state business such proportion of such valuation as the gross state revenue of that class, bears to the gross revenue in the state. When this is done there is ascertained a sum which, in any event, is, considering all the evidence, and regardless of the method by which the result is reached, the very least value upon which a reasonable return should be had as to that class of business. These figures, as to values, are probably less than the actual values, but for the purposes of the cases are taken as figures representing a minimum valuation upon which at least a fair return

175 should be had, if any, because the rates in question at such valuation are confiscatory. It is therefore unnecessary to consider how much more the property is worth.

14. There are, therefore, in the cases tried, findings made and hereinafter set forth, showing: (*a*) All earnings, state and interstate, freight, miscellaneous freight, passenger and miscellaneous passenger; the proportions which state and interstate freight and passenger earnings (exclusive of miscellaneous) bear to all combined state and

interstate freight and all passenger earnings (including miscellaneous) respectively, and that which they bear to all earnings in the state. (*b*) Miscellaneous freight and miscellaneous passenger earnings, (undivided as between state and interstate) with the proportions they are of all earnings and of, respectively all freight and passenger. (*c*) All expenses, divided in proportion to revenue, as between all kinds of freight and passenger business, including miscellaneous, but undivided as between state and interstate. (*d*) A deduction from all state freight (exclusive of miscellaneaus), of such proportion of the expenses of all freight and all passenger respectively as the freight and passenger earnings respectively, exclusive of miscellaneous, bore to all freight and passenger earnings. (*e*) A like deduction of extra cost of doing such business respectively, including miscellaneous. (*f*) A deduction from freight earnings of sums equalling the diminution which would have been caused if the rates fixed by the act had been charged. (*g*) The value of that portion of complainants' property assignable to the particular traffic. This is ascertained by taking, for each class of business, of the entire value in the state such proportion as the earnings upon that portion of the business bear to all the earnings in the state.

The results thus reached and the sums finally ascertained, irrespective of the methods by which the apportionments are made, in the light of all the facts and circumstances in evidence, are fair, just and reasonable, and such as ought, in each instance, to be fixed

Anything in the way of a return less than six per cent. interest upon the part of the property assignable to any traffic in question is unreasonable and confiscatory.

176 15. The complainants made out and served their statements upon defendants, not dividing the miscellaneous as between state and interstate, for the reasons therein thus set forth:

"Inasmuch as differences might arise between complainant and the state as to the method of apportioning miscellaneous freight, and mail, express and miscellaneous passenger earnings, and as no question as to such earnings is here involved, same have, to avoid confusion and unnecessary controversy, been left undivided as between state and interstate earnings."

No request was ever made for such a division, though it could have been made by complainants had a request been made therefor by defendants. The actual division could have been made by defendants had they so desired. If an accurate division were necessary it would even now be called for, regardless of the time necessary to be devoted to the work, though neither party is entitled to have the case delayed to obtain the information. To do so would make necessary a possible change in some percentages, though not enough to change the result. As neither party thought an actual division was necessary, a court could well assume as the proofs clearly show, that if made, the final result of the case would not be changed thereby. As a matter of fact it would be fairer and better to deal alone with the effect of the laws in question upon strictly freight and passenger business. At the trial, however, the state's experts made an estimated division of these miscellaneous earnings, both freight and passenger,

as between state and interstate, by arbitrarily assigning the same in the proportion of the revenue received from purely freight and purely passenger earnings respectively. This was an arbitrary basis, unwarranted in fact and made in a method which assigned entirely too great a porportion to the state business and improperly and unnecessarily enlarged the state earnings. It is, therefore rejected. From the figures hereinafter set forth, it will be seen that the miscellaneous earnings are but a small proportion of all earnings, especially of the freight. To avoid confusion in making new tabulations, the arbitrary division made by the state's experts may be assumed to be correct, still this would make no difference in the result of
177 the cases. This because there should be charged against these earnings a sum equalling the revenue proportion of all the expense of freight and passenger respectively, plus an extra cost of doing state business. The sums ascertained in this way would be the fair, just and equitable charge as the minimum expense of doing such business. When so made there should be assigned as the valuation upon which there should be a return, such proportion of the entire value as the respective earnings from miscellaneous freight and passenger, bear to all earnings. When this is done it is apparent that no fair return is received upon this class of business. Hence, if the miscellaneous earnings were added to the freight and passenger earnings respectively, so as to consider all freight as a whole, and also all passenger as a whole, the result reached will not and could not be changed. Had a desire been, in proper time, expressed for an accurate division of miscellaneous earnings as between state and interstate, according to the facts, it would have been ascertained, so that the loss would have been shown, considering freight and passenger earnings alone, and also such loss considering the miscellaneous with each. However, the miscellaneous passenger business consists in the main of mail and express, and it is difficult to see why, in ascertaining the losses or gains under a two cent fare law there should be included either losses or gains from the miscellaneous earnings, especially when the main portion of the earnings are more in the nature of freight earnings from a passenger service.

16. The expense of doing all the state business, when ascertained on the revenue basis, estimating the extra cost of doing the state freight business at the minimum of at least 50 per-cent, and the passenger business at the minimum of at least 25 per-cent, shows a sum which would be fair and reasonable to adopt as the cost of doing the entire state business. So that, if all the state business be considered as a whole and be done at the rates now in existence and those fixed by the laws questioned in the bills, there is no doubt that there is no reasonable or compensatory return upon the value of the portion of the property assignable to the whole of the
178 state traffic. It is not here necessary to determine whether, as many competent railroad managers say, that no state rates are compensatory. It is true that such will be the result in Missouri, if the laws in question are enforced. There is a reason why, there, it is true. That state is peculiar in its central location, its class of business, and the location of its cities. The short line between the rivers, as a transportation problem, necessarily fixes the rate for the

enormous freight traffic passing to and from the east and the west. There are located at the two rivers two of the great markets of the United States. Freight rates are, by state laws and state commissions, fixed to a large extent upon a mileage basis. The result is that the vast traffic between Kansas City and St. Louis is done at the expense of a carriage of 280 miles and upwards, whereas, the compensation of the carrier is fixed upon the theory of a carriage of 198 miles. So with the passenger business. There are many large centers upon each side of the state particularly the great cities, St. Louis, Kansas City and St. Joseph. There are many large competitive cities in the interior. There are great and marked differences in the respective distances between competitive points on the many different lines in the state. As passenger rates are fixed by law upon the mileage basis the necessary result is that every company has numerous instances in which it is put to the expense of a carriage of a long distance but is paid at a rate for a much shorter distance. Taking these facts into consideration, together with the extra cost of doing state business, it is a fact, whether all state business be treated as a whole or subdivided into classes, the rates now in existence and those fixed by the laws in question, fail to bring any fair or substantial return; nothing like one-half of the rate of interest which is fixed by law.

17. The adoption of the two cent fare did not cause any substantial increase in travel. At first a great many persons rode as state passengers to and from the state line, so that the state obtained more revenue than that to which it was entitled. Any statement of the passenger business which included July and August, 1907 is unduly fair to the state. However, state and interstate fares soon became the same, and the longer the period over which the figures
179 are extended the greater will be the loss shown.

18. If the companies had, after the two-cent passenger rate went into effect, been permitted to charge the amount which they, prior thereto, actually received per passenger per mile, they would have received this much more money:

Name of road.	Period covered, months.	From State passengers.	From interstate passengers.
St. L. & S. F. R. R. Co.....	12	66,008.72	509,738.63
A. T. & S. F. Ry. Co.....	12	30,885.52	66,271.03
C. R. I. & P. Ry. Co. and St. L. K. C. & C. Ry. Co....	12	124,469.14	111,178.60
K. C. So. Ry. Co.....	12	7,044.49	27,260.75
St. L. & H. Ry. Co.....	12	37,275.38	145.23
M. K. & T. Ry. Co.....	12	140,593.46	63,815.12
K. C. C. & S. Ry. Co.....	12	14,654.57	10,846.91
C. B. & Q. R. R. Co.....	12	394,878.77	261,556.41
C. G. W. Ry. Co.....	12	65,945.96	46,162.17

19. In the case of the St. Louis & San Francisco Railway there were included in the expenses sums paid as rentals under a lease of the Kansas City, Fort Scott & Memphis Railway. The common stock of the latter company is owned by the St. Louis & San Francisco, which

operates the property under a lease, requiring it to pay to the holders of preferred stock of the Memphis as a rental a sum equal to a four per-cent annual dividend thereon. There is nothing to impeach the fairness of the lease or its terms. It has been in existence for years. This rental has always been treated as an operating expense and not included in the fixed charges, nor included in the stock issue or bonded indebtedness or interest charge. It is therefore treated as it should be and in fact is, part of the expenses. The total amount charged in the accounts hereinafter set forth as part of the state freight expense is $8,428.56 and as part of the state passenger expense $7,443.68. If these items should be eliminated from the expenses, there would be no difference in the result.

180 20. The minimum values of the railway properties in the state belonging to and used by the complainants in Missouri are:

	Miles.	Value.	Value per mile.
St. Louis and San Francisco (1907)	1688.89	61,238,414.70	36,259.00
Atchison Topeka & Santa Fe, (1907)	348.31	15,091,212.00	43,326.00
Chicago Rock Island & Pacific, (1907)	515.48	19,102,507.59	37,058.00
Kansas City Southern (1908).	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal (1907).	120.61	1,143,007.02	9,477.00
Missouri Kansas & Texas, (1908)	506.21	20,894,229.93	41,276.00
Chicago Burlington & Quincy (1908)	1136.34	53,172,907.83	46,793.00
Kansas City Clinton & Springfield (1907)	151.01	2,380,222.48	15,762.00
Chicago Great Western (1907)	84.43	3,605,236.38	42,701.00

The sums thus found as the minimum values in all cases except those of Kansas City Clinton & Springfield and St. Louis & Hannibal are in fact the same as estimated by the assessing officers of Missouri. In the cases of those two companies it is one third less. Nevertheless the valuations thus found are, aside from and independently of the fact that they were estimates of the state, found in view of all the facts and circumstances in evidence to be the minimum fair and reasonable values of the properties.

21. There are now made and submitted, tables showing the earnings and expenses and assignable fixed charges and value of the complainants' property in the cases tried. From the expenses, even taxes and rentals are excluded, though probably they should not be. The periods over which the findings extend were, at the trial, adopted by the parties as fairly representative. They are in fact sufficiently fairly representative of the actual earnings and expenses, under ordinary and usual conditions, to be used as tests to determine whether the rates permit of a reasonable return upon the investment. They were supported by statements covering other years and longer periods. These tables treat state freight as distinct from miscellaneous freight,

and state passenger as distinct from miscellaneous passenger,
181 but do not charge against either freight or passenger earnings any expense of doing miscellaneous business, nor do they include in the assignable proportion of value or interest any part of that assignable to the miscellaneous business. Nor do these tables include the St. Louis Southwestern, Missouri Pacific, St. Louis, Iron Mountain & Southern, Quincy, Omaha & Kansas City, Wabash, St. Joseph & Grand Island, Chicago, Milwaukee & St. Paul, or Chicago & Alton Railways. This because the cases of these companies, by stipulations, are to abide the result in other cases as to which findings are made. These tabulations contain the figures agreed upon by the experts for both sides if the court should adopt the results reached by a revenue basis.

182 (A) St. Louis and San Francisco R. R. Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for three months ending September 30th, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$2,214,002.82	76.94	54.68
State freight	577,192.84	20.04	14.26
Miscellaneous freight	86,814.57	3.02	2.14
Total.....	2,878,010.23	100.	71.08
		Per cent of all passenger earnings.	
Interstate passenger	368,687.43	31.49	9.11
State passenger	599,051.59	51.17	14.79
Miscellaneous passenger..	203,077.28	17.34	5.02
Total	1,170,816.30	100.	28.92
Grand total	4,048,826.53		100.

(3) *Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.*

All freight expenses, including miscellaneous.....		$1,802,813.26
All passenger expense, including miscellaneous.....		974,816.61
	Freight.	Passenger.
Percentage of expenses to earnings.....	62.64%	83.26%

(4) *Taxes and Rentals.*

Freight	$112,452.04
Passenger	38,979.63
Total	$151,431.67

183 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above shown are	577,192.84	599,051.59
Expense of state business	361,644.33	498,716.20
Leaving	215,548.51	100,335.39
Less Taxes & Rentals (Par. 4)	22,760.29	20,097.90
Leaving	192,788.22	80,237.49
Deduct extra cost of state business, freight estimated at 50% passenger 25%	131,425.08	53,907.36
Leaving	61,363.14	26,330.13
Deduct diminution in earnings if the state freight rates in question had been charged	11,389.27	
Leaving as surplus	49,973.87	26,330.13

(6) *Valuation.*

Valuation of property in state is $61,238,414.70 of which 14.26% is assignable to state freight and 14.79% to state passenger business	2,183,149.48	2,264,290.38
Six per-cent upon this part for the period covered is	130,988.97	135,857.42

(7) *Return on Value.*

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	2.29%	1.16%

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	$116,792.45	$121,133.27

184 (B) Atchison, Topeka & Santa Fe R. R. Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for six months ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	1,872,915.00	90.05	67.72
State freight	141,133.00	6.79	5.10
Miscellaneous freight	65,833.56	3.16	2.38
Total	2,079,881.56	100.	75.2
		Per cent of all passenger earnings.	
Interstate passenger	355,318.12	51.81	12.85
State passenger	104,370.19	15.22	3.77
Miscellaneous passenger	226,080.00	32.97	8.18
Total	685,768.31	100.	24.80
Grand total	2,765,649.87		

(3) *Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.*

All freight expense, including miscellaneous	1,382,738.65
All passenger expense, including miscellaneous	572,167.20

	Freight.	Passenger.
Percentage of expenses to earnings	66.48%	83.43%

(4) *Taxes & Rentals.*

Freight	32,361.50
Passenger	10,854.04
Total	43,215.54

185 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above (par. 2) shown are	141,133.00	104,370.19
Expense of state business	92,581.89	87,834.09
Leaving	48,551.11	16,536.10
Less Taxes & Rental	3,503.41	901.74
Leaving	45,047.70	15,634.36
Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,859.55	17,947.71
Leaving	3,188.15 Def.	2,313.35
Deduct diminution in earnings if the state freight rates in question had been charged	13,885.87	
Leaving	Def. 10,697.72	Def. 2,313.35

(6) *Valuation.*

Valuation of property in state is $15,091,212.00, of which 5.10% is assignable to state freight, and 3.77% to state passenger business	384,825.91	284,469.35
Six per-cent upon this part for the period covered is	23,089.35	17,068.16

(7) *Return on Value.*

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing%	Nothing%

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is	17,934.56	13,257.51

186 (C) Chicago, Rock Island & Pacific Ry. Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for three months ending September 30, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$665,228.16	79.38	59.86
State freight	150,953.68	18.02	13.58
Miscellaneous freight ...	21,815.70	2.60	1.96
Total	$837,997.54	100.	75.40
		Per cent of all passenger earnings.	
Interstate passenger	$113,524.21	41.53	10.22
State passenger	114,853.04	42.02	10.33
Miscellaneous passenger..	44,980.08	16.45	4.05
Total	$273,357.33	100.	24.60
Grand total	$1,111,354.87		100.00

(3) *Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.*

All freight expense, including miscellaneous.....	$619,199.73
All passenger expense, including miscellaneous.....	317,633.62

	Freight.	Passenger.
Percentages of expenses to earnings..	73.89%	116.20%

(4) *Taxes and Rentals.*

Freight	$74,227.43
Passenger	21,015.44
Total	$95,242.87

187 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above (par. 2) shown are	$150,953.68	$114,853.04
Expense of state business	111,579.80	133,469.65
Leaving	$39,373.88 Def.	18,616.61
Less taxes and rentals	13,375.78	8,830.68
Leaving	$25,998.10 Def.	27,447.29
Deduct extra cost of state business freight estimated at 50% passenger 25%	$41,919.82	17,501.61
Leaving	Def. 15,921.72 Def.	44,948.90
Deduct diminution in earnings if the state freight rates in question had been charged	$9,989.43	
Leaving	Def. 25,911.15 Def.	44,948.90

(6) *Valuation.*

Valuation of property in state is $19,102,507.59, of which 13.58% is assignable to state freight, and 10.33% to state passenger business	$648,530.13	$493,322.26
Six per cent upon this part for the period covered is	$38,911.81	$29,599.34

(7) *Return on Value.*

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing%	Nothing%

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$24,907.02	$18,946.21

188 (D) Kansas City Southern Railway Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this Company are for six months ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent. of all freight earnings.	Per cent. of all earnings.
Interstate freight	$702,249.91	79.35	67.11
State freight	38,748.76	4.38	3.70
Miscellaneous freight ...	$144,046.62	16.27	13.77
Total	$885,045.29	100.	84.58
		Per cent. of all passenger earnings.	
Interstate passenger	$89,504.58	55.47	8.55
State passenger	$31,865.28	19.75	3.05
Miscellaneous passenger..	$39,973.54	24.78	3.82
Total	$161,343.40	100	15.42
Grand Total	$1,046,388.69		100.00

(3) *Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.*

All freight expense, including miscellaneous..... $571,297.54
All passenger expense, including miscellaneous..... $141,432.56

	Freight.	Passenger.
Percentages of expenses to earnings..	64.55%	87.66%

(4) *Taxes and Rentals.*

Freight $22,331.70
Passenger 3,737.37

Total $26,069.07

189 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above (par. 2) shown are	38,748.76	$31,865.28
Expense of state business	25,022.83	27,932.93
Leaving	13,725.93	3,932.35
Less taxes and rentals	978.13	738.13
Leaving	$12,747.80	3,194.22
Deduct extra cost of state business freight estimated at 50%, passenger 25%	11,711.60	5,346.15
Leaving	1,036.20	Def. 2,151.93
Deduct diminution in earnings if the state freight rates in question had been charged	2,957.58	
Leaving	Def. 1,921.38	Def. 2,151.93

(6) *Valuation.*

Valuation of property in state is $8,039,084.40, of which 3.70% is assignable to state freight, and 3.05% to state passenger business	148,723.06	122,596.04
Six per cent upon this part for the period covered is	8,923.38	7,355.76

(7) *Return on Value.*

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	5,295.38	$4,365.11

190 (E) St. Louis & Hannibal Railway Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivision (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	51,735.05	36.25	24.61
State freight	87,941.99	61.62	41.84
Miscellaneous freight	3,044.11	2.13	1.45
Total.....	$142,721.15	100.	67.90
		Per cent of all passenger earnings.	
Interstate passenger	198.19	0.29	0.09
State passenger	52,667.38	78.04	25.05
Miscellaneous passenger ...	14,619.99	21.67	6.96
Total	$67,485.56	100.	32.10
Grand total	$210,206.71		100

(3) *Expenses, Less Taxes and Rentals, Undiv-ded Between State and Interstate.*

All freight expense, including miscellaneous.....	$117,908.81
All passenger expense, including miscellaneous.....	68,343.04

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.61%	101.27%

(4) *Taxes and Rentals.*

Freight	$5,994.07
Passenger	2,273.61
Total.....	$8,267.68

191 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above (par. 2) shown are	$87,941.99	$52,667.38
Expense of state business	72,655.40	53,334.91
Leaving	15,286.59 Def.	667.53
Less taxes and rentals	3,693.55	1,774.32
Leaving	11,593.04 Def.	2,441.85
Deduct extra cost of state business freight estimated at 50% passenger 25%	12,026.69	2,444.68
Leaving Def.	433.65 Def.	4,886.53
Deduct diminution in earnings if the state freight rates in question had been charged	15,126.02	
Leaving Def.	15,559.67 Def.	4,886.53

(6) *Valuation.*

Valuation of property in state is $1,143,007.02, of which 41.84% is assignable to state freight, and 25.05% to state passenger business	$478,234.14	$286,323.26
Six per cent upon this part for the period covered is	28,694.05	17,179.40

(7) *Return on Value.*

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.	16,359.44	9,794.55

192 (F) Missouri, Kansas and Texas Railway Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for July, August, October, November and December, 1907, and January, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$1,333,455.26	81.73	57.89
State freight	277,416.52	17.01	12.04
Miscellaneous freight	20,603.37	1.26	0.89
Total	1,631,475.15	100.	70.82
		Per cent of all passenger earnings.	
Interstate passenger	303,214.54	45.12	13.16
State passenger	246,368.53	36.66	10.70
Miscellaneous passenger	122,458.22	18.22	5.32
Total	672,041.29	100.	29.18
Grand Total	$2,303,516.44		100.00

(3) *Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.*

All freight expense, including miscellaneous	$1,010,643.65
All passenger expense, including miscellaneous	516,589.98

	Freight.	Passenger.
Percentages of expense to earnings	61.95%	76.87%

(4) *Taxes and Rentals.*

Freight	$119,017.87
Passenger	58,465.49
Total	177,483.36

193 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above (par. 2) shown are	$277,416.52	246,368.53
Expenses of state business	171,910.48	189,381.89
Leaving	105,506.04	56,986.64
Less taxes and rentals	20,244.94	21,433.45
Leaving	85,261.10	35,553.19
Deduct extra cost of state business freight estimated at 50% passenger 25%	66,590.77	27,482.59
Leaving	18,670.33	8,070.60
Deduct diminution in earnings if the state freight rates in question had been charged	20,222.85	
Leaving as surplus	Def. 1,552.52	8,070.60

(6) *Valuation.*

Valuation of property in state is $20,894,229.93, of which 12.04% is assignable to state freight, and 10.70% to state passenger business	$1,257,832.64	1,117,841.30
Six per cent upon this part for the period covered is	75,469.96	67,070.48

(7) *Return on Value.*

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	Nothing %	0.72%

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.	62,439.68	55,490.41

194 (G) Chicago, Burlington & Quincy Railroad Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$6454699.87	78.75	52.40
State freight	$1580529.64	19.28	12.83
Miscellaneous freight	161579.41	1.97	1.31
Total	$8196608.92	100	66.54
		Per cent of all passenger earnings.	
Interstate passenger	$1777788.27	43.15	14.43
State passenger	$1611702.92	39.11	13.09
Miscellaneous passenger ..	731021.89	17.74	5.94
Total	$4120513.08	100	33.46
Grant Total.....	$12317122.00		100

(3) *Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.*

All freight expense, including miscellaneous..... $6793610.60
All passenger expense, including miscellaneous..... $3527311.81

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.88	85.60

(4) *Taxes and Rentals.*

Freight	Cr. $12235.30
Passenger	Cr. $6152.58
Total	Cr. $18387.88

195 (5) *State Earnings and Expenses.*

		Freight.	Passenger.
State earnings above (par. 2) shown are		$1580529.64	$1611702.92
Expense of state business		$1324453.83	$1489746.71
Leaving		$256075.81	$121956.21
Less taxes and rentals	Cr.	2487.99	2798.50
Leaving		$258563.80	$124754.71
Deduct extra cost of state business freight estimated at 50%, passenger 25%		484129.29	158205.70
Leaving	Def.	$225565.49	Def. $33450.99
Deduct diminution in earnings if the state freight rates in question had been charged		112533.71	
Leaving Deficit		$338099.20	Def. 33450.99

(6) *Valuation.*

Valuation of property in state is $53172907.83, of which 12.83% is assignable to state freight, and 13.09% to state passenger business	$6822084.07	$696033.63
Six per cent upon this part for the period covered is	$409325.04	$417620.02

(7) *Return on Value.*

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing%	Nothing%

196 (H) Kansas City, Clinton & Springfield Ry. Company.

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for the year ending June 30th, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$116893.60	68.27	41.04
State freight	45003.15	26.29	15.80
Miscellaneous freight	9319.58	5.44	3.27
Total	$171216.33	100	60.11
		Per cent of all passenger earnings.	
Interstate passenger	41145.00	36.22	14.45
State passenger	47646.80	41.95	16.73
Miscellaneous passenger	24797.39	21.83	8.71
Total	$113589.19	100	39.89
Grand Total	$284805.52		100

(3) *Expenses (Less Taxes & Rental) Undivided Between State and Interstate.*

All freight expense, including miscellaneous	$98988.29
All passenger expense, including miscellaneous	$138384.77

	Freight.	Passenger.
Percentages of expenses to earnings	57.81%	121.83

(4) *Taxes and Rentals.*

Freight	$9182.36
Passenger	$5749.38
Total	$14931.74

197 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above (par. 2) shown are	$45003.15	47646.80
Expense of state business	26024.02	58052.41
Leaving	18979.13 Def.	10405.61
Less taxes and rentals	2414.04	2411.86
Leaving	$16565.09 Def.	$12817.47
Deduct extra cost of state business freight estimated at 50%, passenger 25%	8483.30	4760.44
Leaving	8081.79	17577.91
Deduct diminution in earnings if the state freight rates in question had been charged	2970.21	
Leaving	5111.58	$17577.91

(6) *Valuation.*

Valuation of property in state is $2380222.48 of which 15.80% is assignable to state freight, and 16.73% to state passenger business.	$376075.15	$398211.22
Six per cent upon this part for the period covered is	22564.51	23892.67

(7) *Return of Value.*

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	1.36%	Nothing—%

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 5, is	$23881.78	$25287.48

198 **(I) Chicago Great Western Railway Company.**

(1) *Period Covered.*

The representative period taken by the experts upon both sides as to this company are for six months, ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) *Earnings and Percentages.*

Character.	Amount.	Per cent. of all freight earnings.	Per cent. of all earnings.
Interstate freight	$224169.58	86.02	57.39
State freight	29129.36	11.18	7.45
Miscellaneous freight	7280.24	2.80	1.86
Total	260579.18	100	66.70
		Per cent. of all passenger earnings.	
Interstate passenger	$72360.87	55.62	18.53
State passenger	38105.03	29.28	9.75
Miscellaneous passenger	19643.99	15.10	5.02
Total	$130109.89	100	33.30
Grand Total	$390689.07		100.

(3) *Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.*

All freight expense, including miscellaneous	$198887.69
All passenger expense, including miscellaneous	126355.88

	Freight.	Passenger.
Percentages of expenses to earnings	76.33%	97.11%

(4) *Taxes and Rentals.*

Freight	$12294.18
Passenger	11312.16
Total	$23606.34

199 (5) *State Earnings and Expenses.*

	Freight.	Passenger.
State earnings above (par. 2) shown are	$29129.36	$38105.03
Expenses of state business	22235.64	36996.98
Leaving	6893.72	1108.05
Less taxes and rentals	1374.49	3312.25
Leaving	5519.23 Def.	2204.20
Deduct extra cost of state business, freight estimated at 50% passenger 25%	9347.72	6090.35
Leaving Def.	3828.49 Def.	8294.55
Deduct diminution in earnings if the state freight rates in question had been charged	1893.41	
Leaving Def.	5721.90 Def.	8294.55

(6) *Valuation.*

Valuation of property in state is $3605236.38, of which 7.45% is assignable to state freight, and 9.75% to state passenger business	$134295.06	$175755.27
Six per cent upon this part for the period covered is	8057.70	10545.32

(7) *Return of Value.*

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	—%	—%

(8) *Interest Charge.*

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.	7164.08	9375.81

200 22. If it should be assumed that the state experts correctly divided miscellaneous earnings as between state and interstate which they did not do, still the fair and reasonable sum to be charged against the state part of these miscellaneous freight and passenger earnings is the revenue proportion of the entire freight and passenger expense plus a minimum extra cost for miscellaneous freight and for miscellaneous passenger. When this is done it clearly appears that even without an allowance for extra cost, the result could not be changed if the findings already made as to state freight and passenger had included the miscellaneous, or had the

miscellaneous of each class been separately considered. In no case would there *by* any fair return. If miscellaneous were considered separately, or if considered with freight and passenger respectively, the result would not be effected. This clearly appears from a tabulation now made as to each company with the exception of the St. Louis and Hannibal Ry. Company and the Kansas City, Clinton and Springfield Ry. Co., which are omitted for the reason that the State compiled and submitted no figures for these roads, showing: (*a*) The state experts' division of miscellaneous, though in fact it is too favorable to the state. (*b*) A deduction from earnings of the percentage proportion of expenses to earnings as done in Smyth v. Ames, 169 U. S. 466, which is the same as the revenue basis. (*c*) The minimum extra cost now found of doing the state over interstate being a mere fraction less than, and practically the same as, found as to the strictly freight and passenger. (*d*) The proportion that state's part of the miscellaneous was of all earnings, and the amount of return to which the company was entitled at six per cent interest upon that proportion of the value of the entire property as hereinbefore and now found to be fair, reasonable and just.

201 (1) St. Louis and San Francisco Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings..	$17,953.25	00.62	00.44	$125,704.84	10.74	3.10
Less revenue proportion of expense 00.62% freight, and 10.74% passenger	$11,777.44			$104,695.30		
Leaving...	6,775.81			21,009.54		
Less increased cost freight 50% passenger 25%....	5,588.72			22,713.23		
Leaving...	1,187.09		Def.	1,703.69		
Less Taxes and Rentals	697.20			4,186.41		
	489.89		Def.	5,890.10		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	4,041.74			28,475.86		
Total Deficit.	3,551.85			34,365.96		

202 (2) Atchison, Topeka and Santa Fe Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,608.35	00.22	00.17	$51,320.16	7.48	1.86
Less revenue proportion of expense 00.22% of freight and 7.48% passenger	3,042.02			$42,798.11		
Leaving	1,566.33			8,522.05		
Less increased cost freight 50%, passenger 25%	1,521.01			9,726.84		
Leaving	45.32		Def.	1,204.79		
Less Taxes and rentals	71.20			811.88		
	Def. 25.88		Def.	2,016.67		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	769.65			8,420.90		
Total deficit	795.53			10,437.57		

203 (3) Chicago, Rock Island and Pacific Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,035.91	00.48	00.36	$22,620.48	8.28	2.04
Less revenue proportion of expense 00.48% of freight, and 8.28% passenger	$2,966.88			23,300.06		
Leaving	1,069.03		Def.	3,679.58		
Less increased cost freight 50%, passenger 25%	1,483.44			5,907.98		
Leaving	Def. 414.41		Def.	9,587.56		
Less Taxes and Rentals	356.29			1,740.08		
	Def. 770.70		Def.	$11,327.64		

Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,031.54			5,845.37		
Total deficit ..	$1,802.24			$17,173.01		

204 (4) Kansas City Southern Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$7,533.64	00.85	00.72	$10,493.05	6.50	1.00
Less revenue proportion of expense 00.85% freight, and 6.50% passenger ..	4,856.03			9,193.12		
Leaving	$2,677.61			$1,299.93		
Less increased cost freight 50%, passenger 25%	2,428.02			$2,107.35		
Leaving.....	249.59		Def.	807.42		
Less Taxes and Rentals	189.82			242.93		
	59.77		Def.	1,050.35		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	1,736.44			2,411.73		
Total deficit ..	1,676.67			3,462.08		

205 (5) Missouri Kansas and Texas Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$3,547.90	00.22	00.15	54,885.77	8.17	2.38
Less revenue proportion of expense 00.22% freight and 8.17% passenger ..	2,223.42			42,205.40		
Leaving	1,324.48			12,680.37		

Less increased cost freight 50%, passenger 25%	1,111.71	9,505.26
Leaving	212.77	3,175.11
Less Taxes and Rentals	261.84	4,776.63
	Def. 49.07	1,601.52
Amount due at 6% interest on portion of value assignable to the state part of the traffic	940.24	$14,918.48
Total deficit ..	989.31	$16,520.00

206 (6) Chicago Burlington and Quincy Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings ...	$31,743.33	00.39	00.26	347,600.91	8.44	2.82
Less revenue proportion of expense 00.39% freight, and 8.44% passenger	26,495.08			297,705.12		
Leaving	5,248.25			49,895.79		
Less increased cost freight 50%, passenger 25%	13,247.54			66,666.19		
Leaving...Def.	7,999.29			Def. 16,770.40		
Less Taxes and Rentals ..... Cr.	47.72			Cr. 519.28		
Def.	7,951.57			Def. $16,251.12		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	8,294.97			89,968.56		
Total deficit..	$16,246.54			$106,219.68		

207 (7) Chicago Great Western Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$837.23	00.32	00.21	6,777.18	5.21	1.73
Less revenue proportion of expense 00.32% freight, and 5.21% passenger ..	636.44			6,583.14		
Leaving	200.79			194.04		
Less increased cost freight 50%, passenger 25%	318.22			1,541.54		
Leaving	Def. 117.43			Def. 1,347.50		
Less Taxes and Rentals	39.34			589.36		
	Def. 156.77			Def. 1,936.86		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	227.13			1,871.12		
Total deficit ..	383.90			3,807.98		

208 23. If the commodities affected by the Freight Act of 1907 are alone considered, irrespective of and separate from the earnings from other freight, the rates are plainly confiscatory, and not only fail to bring any return upon the portion of the property devoted to such use, but do not enable any complainant to meet operating expenses. The following tables are in this respect submitted as findings of the earnings of and expenses fairly chargeable to these commodities for a period which is representative.

(1) St. Louis & San Francisco.

For the three months representative period the result is:

The gross earnings upon the commodities affected by the Freight Act of 1907, for three months, are $56,699.26, or $226,797.04 for the year, which is 10.94% of all state freight earnings. Applying this to the state freight statement, there is the result:

All earnings from this class of state freight were for 3 months	$56,699.26
All state freight expenses were $382,405.32 for three months, and 10.94% thereof chargeable to these commodities	41,835.14
	$14,864.12

Diminution if the rates fixed by the Act of 1907 had been charged	11,389.27
	$3,474.85

10.94% of Extra cost at 50%.	$130,246.94	$14,249.02
10.94% of Interest	$117,775.28	$12,884.62
10.94% of Valuation	$132,091.26	$14,450.78

209 (2) Atchison, Topeka & Santa Fe.

The gross earnings upon the commodities affected by the Freight Act of 1907, for six months are $47,137.00, or $94,274.00 for the year, which is 33.4% of all state freight earnings. Applying this to the findings as to state freight, there is this result:

All earnings from this class of state freight were for six months	$47,137.00
All state freight expenses were $96,085.30 and 33.4% thereof chargeable to these commodities	32,092.49
Leaving	$15,044.51
Diminution, if the rates fixed by the Act of 1907 had been charged	13,885.87
	$1,158.64

33.4% of Extra cost at 50%.	$43,443.57	$14,510.15
33.4% of Interest	$17,934.56	$ 5,990.14
33.4% of Valuation	$23,089.55	$ 7,711.91

210 (3) Chicago, Rock Island & Pacific.

For the three months representative period, July, August and September, 1907, there was this result:

Revenue actually received on said commodities being 7.24% of total revenue actually received on all freight traffic in Missouri for said three months	$60,639.75
Operating expenses, taxes, rentals and hire of equipment applicable to said revenue for said three months arrived at as follows:	
Total operating expenses, taxes, rentals and hire of equipment assigned to freight traffic $693,427.16; Proportion (7.24% based on revenue) assigned to commodities affected by maximum freight act of 1907	$50,204.13
Net revenue on said commodities for said three mos.	$10,435.62
Deduct the diminution in revenue if said act of 1907 had been in effect	9,989.43
Leaving	446.19

Deduct extra cost of transporting state freight traffic, assuming such extra cost to be 50%. Schedule 4 shows that 50% increased cost increases revenue percentage from 18.02% to 24.79%, an increase of 6.77% or 37.57%. 37.57% of 7.24% equals 2.72%. 2.72% of total operating expenses excluding taxes, rentals, etc., $618,100.58 equals	$16,812.34
Deficit	$16,366.15

211 (4) *Kansas City Southern.*

The gross earnings upon commodities affected by the Act of 1907 for six months on $14,014.31 or $28,028.62 for the year, which is 36.17% of all state freight earnings.

Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for six months	$14,014.31
All state freight expenses were $26,000.96 and 36.17% of this amount would be	9,404.55
Leaving	4,609.76
Diminution if rates fixed by the Act of 1907 had been charged	2,957.58
	1,652.18

36.17% of extra cost at 50%	$11,735.85	—4,244.86
36.17% of interest	5,295.38	—1,915.34
36.17% of valuation	13,768.01	—4,979.89

212 (5) St. Louis & Hannibal.

The gross earnings upon commodities affected by the Act of 1907 for one year are 33% or $29,020.86.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were	$29,020.86
All state freight expenses were $76,348.95 and 33% of this amount is	25,195.15
Leaving	3,825.71
Diminution, if rates fixed by the Act of 1907 had been charged	15,126.02
Deficit	11,300.31

33% of extra cost at 50%	$12,026.69	— 3,968.81
33% of interest	$16,359.44	— 5,398.61
33% of valuation	$43,041.07	—14,203.55

213 (6) Missouri, Kansas & Texas.

Gross earnings on commodities affected by the Act of 1907 for six months (at 33% of total state freight earnings) would be $91,547.45 or $183,094.90 for the year.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were, for six months	$91,547.45
All state freight expenses were $192,155.42 and 33% of this amount would be	63,411.29
Leaving	$28,136.16
Diminution, if rates fixed by Act of 1907 had been charged	20,222.85
	$7,913.31

33% of extra cost at 50%	$73,879.86	$24,380.00
33% of interest	62,439.68	20,605.09
33% of valuation	75,469.96	24,905.09

214 (7) Chicago, Burlington & Quincy.

The gross earnings upon commodities affected by the Act of 1907 for one year were $526,532.72, which is 31.92% of all state freight earnings, for the year 1905.

Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for one year (31.92% of $1,580,529.64)	$504,505.06
All state freight expense- were $1,322,165.90, and 31.92% of this amount is	422,035.35
Leaving	$82,469.71
Diminution, if the rates fixed by the Act of 1907 had been charged	$117,388.07
Deficit	$34,918.36

31.92% of extra cost at 50%	$472,092.76	$150,692.00
31.92 of valuation	$409,325.04	130,656.55

215 (8) Kansas City, Clinton & Springfield Railway Company.

The gross earnings upon commodities affected by the Act of 1907, for one year are $14,365.00. Since the figures of the company do not show miscellaneous freight earnings, they are estimated at 31.92% of all state freight, based on C. B. & Q. figures, as the percentage is the smallest with that Company.

Applying this to the state freight statement there is this result:

Earnings from this class of state freight were for one year		$14,365.00
All state freight expenses were $28,438.06 and 31.92% of this amount is		9,077.43
Leaving		5,287.57
Diminution, if rates fixed by the Act of 1907 had been charged		$2,970.21
		$2,317.36
31.92% of extra cost at 50%	$8,483.30—$2,707.87	
31.92% of interest	23,881.78— 7,624.06	
31.92% of valuation	33,846.76—10,803.89	

Such an estimate as to this company is reasonable, in that this company is actually losing money upon all its business, so that a finding as to these matters is unnecessary.

216 (9) Chicago Great Western.

Gross earnings on commodities affected by the Act of 1907 for three months were $7,817.28, or $31,269.12 for the year, which is 57.81% of all state freight earnings.

Applying this to the state freight statement, there is this result:

All earnings from this class of state freight were (earnings of 3 months $7817.28 x 2)		$15,634.56
All state freight expenses were 23,610.13 and 57.81% of this amount would be		13,649.02
Leaving		$1,985.54
Diminution, if rates fixed by the Act of 1907 had been charged		1,777.34
		208.20
57.81% of extra cost at 50%	$9347.72—$5,403.92	
57.81% of interest	7164.08— 4,141.55	
57.81% of valuation	8057.70— 4,658.16	

(10) Other Companies.

As the cases of the other companies abide the result of that of some other case, a finding in this respect is unnecessary.

217 Afterwards, to wit, on the 30th day of December, 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

2998. In Equity.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
vs.
JOHN A. KNOTT *et al.*

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence is concluded, whereupon both parties rest, and this case is fully submitted and is by the Court taken under advisement and the orders and decree herein will be rendered and entered of record as of this date.

(Signed) SMITH McPHERSON, *Judge.*
December 30, 1908.

218 Afterwards, to wit, on the 30th day of December, 1908, a Certificate of the Trial Judge was filed. Said Certificate is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

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No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

220 No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Certificate.

Heretofore this court by order made on the 5th day of March, 1906, referred each and all of the foregoing eighteen cases to F. L. Schofield, a Special Master, to take the evidence and report the same to this court with certain findings, as will appear from the order now of record.

Later on the said Schofield proce-ded with said hearing and took certain evidence, much of it being oral testimony taken down by stenographers and duly transcribed, and other evidence being in the form of exhibits.

Later on this court by agreement of parties, to-wit, on the 13th day of June, 1908, made an order that the said cases should come on for trial October 5th, 1908, to the Court on the evidence thus taken by the said Special Master, Mr. Schofield, together with such other and further evidence as might be submitted by the respective parties.

October 5th, 1908, the hearing of said cases was upon the application of the defendants continued until the 9th day of November, 1908, at which time the hearing of said cases was proceeded with and continued with until and including November 14th, 1908, at which time there was an adjournment of the hearing until December 14th, 1908, when the hearing was again resumed and proceeded with until the 30th day of December, 1908, when said hearing was concluded, and each, all and every of the parties rested.

221 The said cases were heard and are to be determined only upon the evidence received by the court, consisting in part of the evidence taken before the Special Master, Mr. Schofield, and in part received by the court in open court, and there was no other or further evidence received by the court or offered by any party other than that hereinafter scheduled. And in the event of an appeal of any or all of the cases, the clerk will certify to said evidence, subject, however, to such rights as the parties may have under the laws and rules of the Appellate Court to designate what shall be certified up and what omitted.

The evidence so taken by the Special Master, returned and filed in open court and offered in evidence as hereinbefore stated, is as follows:

Five volumes designated as in case No. 2998, marked Volumes I to V, both inclusive, and one volume designated, "2998, Chicago, Burlington & Quincy: Index and Exhibits." Also annual statements of the Chicago, Burlington & Quincy Railroad Company to the Railroad Commissioners for the years ending, respectively, June 30th, 1904, June 30th, 1905, June 30th, 1906, (three copies).

Also four volumes returned designated as "2995: Missouri Pacific," marked repectively, Volumes I to IV, inclusive, together with one volume marked "2995, Missouri Pacific Railway: Index and Exhibits." Also the tax return of the Missouri Pacific for June 1st, 1904, June 1st, 1905, the 26th Annual Report of the Missouri Pacific Railway, Exhibit 34, 36-*b*, and 24, in case No. 2995. Also seven analytical sheets of the Missouri Pacific Railway upon form #1939, and seven analytical sheets of the Missouri Pacific Railway upon form #1941, and two analytical sheets of the Missouri Pacific Railway upon form #1940, in case No. 2995.

Also four volumes of testimony marked I to IV inclusive, in case No. 3000, Wabash Railroad. Also one volume endorsed, "3000 Wabash Railroad: Index and Exhibits." Also exhibits marked in case No. 3000 and being designated "Exhibit 15," being the

222 15th and 17th Annual Report of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904, and June 30th, 1906, respectively. Also the 15th and 16th Annual *Rpoert* of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904, and June 30th, 1905, respectively, each marked "Exhibit 16." Also the 16th and 17th Annual Reports of the Directors of the Wabash Railroad Company for the years ending respectively June 30th, 1905, and June 30th, 1906, each marked "Exhibit 17."

Also one volume returned by the Special Master marked "2989,

Atchison, Topeka & Santa Fe Proceedings," as showing certain proceedings had before him the said Special Master.

All the evidence offered before the said Special Master and returned into court and used in these cases and all the proceedings had therein are included in the papers thus specifically enumerated, each volume and document hereinbefore referred to being now identified by the endorsement thereon of the Trial Judge, "Smith McPherson, Judge."

And pursuant to the order of the court and by agreement of parties, the said cases came on for trial to the Court, November 9th, 1908, and said trial was continued from time to time with certain adjournments until December 30th, 1908, when the trial of all the cases was concluded and the said cases by the Court taken under advisement. The evidence taken before the court in open court is contained in volumes identified as follows:

Volume I, marked filed by the clerk, December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume II, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume III, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, Volume IV, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume V, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, said volume V being made up of Exhibits, which together with the exhibits hereinafter scheduled, each and all being marked
223 filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, are all the exhibits offered in open court in the trial of said cases; the exhibits other than those in Volume V being as follows: Exhibits A, B, C, D, E, G, H, I, and Exhibits No. 54, 59, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 4, and Exhibit "Douglas I."

And said cases hereinbefore entitled were heard and fully submitted to the Court on the evidence and the exhibits hereinbefore scheduled and on no other evidence than that hereinbefore scheduled. And each, all, and every of the parties before final submission after the introduction of the foregoing, by counsel in open court said no further evidence was desired or would be offered in the cases.

This certificate is now signed and ordered filed as of this date after the submission of the cases and all of them.

Done in open court this December 30th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

224 Afterwards, to wit, on the 21st day of January, 1909, the following order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

225 No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

226 No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Order.

Each of the foregoing causes came on for hearing this January 20, 1909, the parties appeared by counsel, and admitted that the term of office of Herbert S. Hadley as Attorney General had expired, and Elliott W. Major was the duly qualified and acting successor and Attorney General of Missouri. He appeared in person, and by the consent of himself and all counsel in the cases, it is ordered that without any formal pleadings, Elliott W. Major as Attorney General of Missouri be and he is hereby substituted for and in the stead of Herbert S. Hadley, so that all pleadings against and on behalf of said Hadley shall apply to the substituted party as fully as if made against and for him.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to wit, on the 20th day of February, 1909, the following Order was filed and entered of record:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY *et al.*

And Equity cases No. 2989, 2991, 2993, 2994, 2997, 2998, 3002, 3003.

Order.

Whereas, after the cases above numbered had been submitted and argued by agreement of all parties at the request of the Court, James Peabody, and F. P. Johnson, expert accountants for the rail-
227 road companies, and A. P. Taliaferro and T. A. Hamilton, expert accountants for the defendants, compiled statements showing the earnings, operating expenses, etc., for each of said railroad companies for periods of time as therein stated, and affixed a certificate to the effect that said statement in each case correctly shows the results on the various assumptions set forth therein, which said certificate was signed by all four of said expert accountants.

It is therefore ordered that each of said statements be filed and made of record herein.

Done in open court this February 20th, 1909.

(Signed) SMITH McPHERSON, *Judge.*

No. 2988. St. Louis & San Francisco Railroad Company.

Earnings, Operating Expenses, etc., on State Business, Missouri (for 3 Months Ending Sept. 30, 1907).

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings, (not including miscellaneous earnings)	$577,192.84	$599,051.59	$1,176,244.43
2. Operating expenses, (revenue proportion,)	361,644.33	498,716.20	860,360.53
3. Net operating revenue	$215,548.51	$100,335.39	$315,883.90
4. Taxes and rentals, (Revenue basis; not including K. C. F. S. & M. rental)	14,331.73	12,654.22	26,985.95
5. K. C. F. S. & M. Rental	8,428.56	7,443.68	15,872.24
6. Deductions from Net Operating revenue	$22,760.29	$20,097.90	$42,858.19
7. Net Operating Revenue, less Taxes and Rentals	$192,788.22	$80,237.49	$273,025.71
8. Diminution in Revenue under Law of 1907	11,389.27	.....	11,389.27
9. Net Operating Revenue, less Taxes, Rentals and Diminution in Revenue	$181,398.95	$80,237.49	$261,636.44
10. Bond interest	116,792.45	121,133.27	237,925.72
11. Result on flat revenue basis after deducting Bond Interest	$64,606.50	$48,895.78	$23,710.72
229			
12. Six per cent on 3 times the assessed value in 1907 (arrived at on earnings basis) is	$130,988.97	$135,857.42	$266,846.39
13. Less K. C. F. S. & M. Rental deducted above	8,428.56	7,443.68	15,872.24

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	Freight.	Passenger.	Total.
14. Amount to be deducted from figures in line 9.....	$122,560.41	$128,413.74	$250,974.15
15. Result on flat revenue basis, after deducting 6% on 3 times assessed value of property.....	$58,838.54	$48,176.25	$10,662.29
16. Result on flat revenue basis after deducting bond interest, (see line 11,).....	$64,606.50	$40,895.78	$23,710.72
17. Extra cost based on 50% more for freight in proportion to revenue, and 15% more for passenger, in proportion to revenue, than on all other business.....	131,425.08	33,923.62	165,348.70
18. Result of applying basis shown in line 17 to figures in line 16	$66,818.58	$74,819.40	$141,637.98
19. Extra cost based on twice as much for freight in proportion to revenue, and 25% more on passenger in proportion to revenue as compared with all other business	$240,675.56	$53,907.36	$294,582.92
20. Result of applying basis shown in line 19 to figures in line 16	$176,069.06	$94,803.14	$270,870.20
230			
21. Extra cost based on three times as much for freight in proportion to revenue and 35% more on passenger in proportion to revenue, as compared with all other business	$412,663.94	$72,331.40	$484,995.34

22. Result of applying basis shown in line 21 to figures in line 16	$348,057.44	$113,227.18	$461,284.62
23. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business	.....	$96,994.26	.....
24. Result of applying basis shown in line 23 to passenger figures in line 16	.....	$137,890.04	.....
25. Result on flat revenue basis after deducting six per cent on three times assessed value of property (see line 15)	$58,859.54	$48,176.25	$10,662.29 .....
26. Extra cost based on 50% more for freight in proportion to revenue and 15% more on passenger, in proportion to revenue, than on all other business	$131,425.08	$33,923.62	$165,348.70
27. Result of applying basis shown in line 26 to figures in line 25	$72,586.54	$82,099.87	$154,686.41
28. Extra cost based on twice as much for freight in proportion to revenue, and 25% more on passenger in proportion to revenue as compared with all other business	$240,675.56	$53,907.36	$294,582.92
29. Result of applying basis shown in line 28 to figures in line 25	$181,837.02	$102,083.61	$283,920.63
231 30. Extra cost based on three times as much for freight in proportion to revenue, and 35% more on passenger in proportion to revenue, as compared with all other business	$412,663.94	$72,331.40	$484,995.34

	Freight.	Passenger.	Total.
31. Result of applying basis shown in line 30 to figures in line 25	$353,825.40	$120,507.65	$474,333.05
32. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business	.....	$96,994.26	.....
33. Result of applying basis shown in line 32 to passenger figures in line 25	.....	$145,170.51	.....

232 **State's Basis.**

1. Freight and Passenger Revenue	$577,192.84	$599,051.59	$1,176,244.43
Miscellaneous earnings	17,953.25	125,704.84	143,658.09
Total Earnings	$595,146.09	$724,756.43	$1,319,902.52
2. Operating Expenses (Ton-mile and Passenger-mile proportion)	$236,168.56	$578,261.18	$814,429.74
3. Net operating Revenue	$358,977.53	$146,495.25	$505,472.78
4. Taxes and Rentals (on Ton-mile and Passenger-mile basis, not including K. C. F. S. & M. Rental	$9,275.97	$14,558.73	$23,834.70
5. Net Operating Revenue less Taxes and Rentals	$349,701.56	$131,936.52	$481,638.08
6. Diminution in Revenue under Law of 1907	$11,389.27	.....	$11,389.27
7. Net Operating Revenue, less Taxes, Rentals and Diminution in Revenue	$338,312.29	$131,936.52	$470,248.81

8. Proportion on a gross earnings basis of three times assessed value of property in 1907	$2,248,980.78	$2,740,419.06	$4,989,399.84
9. Figures in line 7 are as to figures in line 8	15.04%	4.81%	9.44%
10. Result on flat ton-mile and passenger-mile basis, after deducting taxes and rentals (line 7)	$338,312.29	$131,936.52	$470,248.81
11. Extra cost based on 30% more for freight per ton-mile, and reduced cost based on 10% less for passenger, per passenger-mile, than on interstate	$59,132.25	$25,052.78	$34,079.47

233

12. Result of applying basis shown in line 11 to figures in line 10	$279,180.04	$156,989.30	$436,169.34
13. Figures in line 12 are as to figures in line 8	12.41%	5.72%	8.74%
14. Extra cost based on 50% more for freight per ton-mile and reduced cost based on 20% less for passenger, per passenger-mile than on interstate	$96,270.20	$53,419.93	$42,850.27
15. Result of applying basis shown in line 14 to figures in line 10	$242,042.09	$185,356.45	$427,398.54
16. Figures in line 15 are as to figures in line 8	10.76%	6.76%	8.74%

234 The attached statement of earnings, operating expenses, etc., of the St. Louis & San Francisco Railroad Company, for the three months ending September 30th, 1907, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

235 No. 2989. Atchison, Topeka & Santa Fe Railway Company.

Earnings, Operating Expenses, etc., on State Business, Missouri (for 6 Months Ending Dec. 31, 1907).

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings (not including miscellaneous)	$141,133.00	$104,370.19	$245,503.19
2. Operating expenses (revenue proportion)	92,581.89	87,834.09	180,415.98
3. Net operating revenue	$48,551.11	16,536.10	65,087.21
4. Taxes and rentals (revenue basis)	3,503.41	901.74	4,405.15
5. Diminution in revenue under law of 1907	13,885.87	.....	13,885.87
Total	$17,389.28	901.74	18,291.02
6. Net operating revenue, less taxes, rentals and diminution in revenue	31,161.83	15,634.36	46,796.19
7. Bond interest	17,934.56	13,257.51	31,192.07
8. Result on flat revenue basis after deducting bond interest	13,227.27	2,376.85	15,604.12

9. Six per cent on three times the assessed value in 1907 (revenue basis)	23,089.55	17,068.16	40,157.71
10. Result flat revenue basis after deducting six per cent on three times assessed value of property	8,072.28	1,433.80	6,638.48
236			
11. Result on flat revenue basis after deducting bond interest (line 8)	$13,227.27	2,376.85	15,604.12
12. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger in proportion to revenue, than on all other business	41,859.55	10,907.12	52,766.67
13. Result of applying basis shown in line 12 to figures in line 11	28,632.28	8,530.27	37,162.55
14. Extra cost on basis of twice as much for freight in proportion to revenue and 25% more on passenger in proportion to revenue, as compared with all other business	80,855.76	17,947.71	98,803.47
15. Result of applying basis shown in line 14 to figures in line 11	67,628.49	15,570.86	83,199.35
16. Extra cost on basis of three times as much for freight in proportion to revenue and 35% more on passenger in proportion to revenue as compared with all other business	152,030.64	24,757.44	176,788.08
17. Result of applying basis shown in line 16 to figures in line 11	138,803.37	22,380.59	161,183.96

	Freight.	Passenger.	Total.
18. Extra cost based on 50% more on passenger in proportion to revenue than on other passenger business	.....	34,625.78	.....
19. Result of applying basis shown in line 18 to figures in line 11	.....	32,248.93	.....
237			
20. Result on flat revenue basis after deducting 6% on 3 times assessed value of property (line 10)	8,072.28	1,433.80	6,638.48
21. Extra cost based on 50% more for freight, in proportion to revenue and 15% more for passenger, in proportion to revenue, than on all other business	41,859.55	10,907.12	52,766.67
22. Result of applying basis shown in line 21 to figures in line 20	33,787.27	12,340.92	46,128.19
23. Extra cost on basis of twice as much for freight in proportion to revenue and 25% more on passenger in proportion to revenue as compared with all other business	80,855.76	17,947.71	98,803.47
24. Result of applying basis shown in line 23 to figures in line 20	72,783.48	19,381.51	92,164.99
25. Extra cost on basis of 3 times as much for freight in proportion to revenue and 35% more on passenger in proportion to revenue as compared with all other business	152,030.64	24,757.44	176,788.08
26. Result of applying basis shown in line 25 to figures in line 20	143,958.36	26,191.24	170,149.60

27. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business		34,625.78	
28. Result of applying basis shown in line 27 to figures in line 20		36,059.58	

State's Basis.

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1. Freight and passenger revenue	141,133.00	104,370.19	245,503.19
Miscellaneous earnings	4,608.35	51,320.16	55,928.51
Total earnings	145,741.35	155,690.35	301.431.70
2. Operating expenses (ton-mile and passenger-mile proportion)	60,011.29	120,269.54	180,280.83
3. Net operating revenue	85,730.06	35,420.81	121,150.87
4. Taxes and rentals (ton-mile and passenger-mile-basis)	1,404.49	2,281.85	3,686.34
5. Diminution in revenue under law of 1907	13,885.87	.....	13,885.87
Total	15,290.36	2,281.85	17,572.21
6. Net operating revenue, less taxes, rentals and diminution in revenue	70,439.70	33,138.96	103,578.66
7. Proportion on earnings basis of 3 times assessed value of property in 1907	397,653.44	424,817.61	822,471.05
8. Figures on line 6 are as to figures on line 7	17.71%	7.80%	12.59%

	Freight.	Passenger.	Total.
9. Result on flat ton-mile and passenger-mile basis after deducting taxes, rentals, etc. (Line 6)	70,439.70	33,138.96	103,578.66
10. Extra cost based on 30% more for freight per ton-mile and reduced cost based on 10% less for passenger per passenger-mile than for interstate	17,007.81	9,725.84	7,281.97
11. Result of applying basis shown in line 10 to figures in line 9	53,431.89	42,864.80	96,296.69
12. Figures on line 11 are as to figures on line 7	13.44%	10.09%	11.71%
13. Extra cost based on 50% more for freight per ton-mile and reduced cost based on 20% less for passenger per passenger-mile than on interstate	28,069.80	19,854.20	8,215.60
14. Result of applying basis shown in line 13 to figures in line 9	42,369.90	52,993.16	95,363.06
15. Figures on line 14 are as to figures on line 7	10.65%	12.47%	11.59%

240 The attached statement of earnings, operating expenses, etc. of the Atchison, Topeka & Santa Fe Railway Company for the six months ending December 31st, 1907, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

No. 2992. St. Louis, Kansas City and Colorado Railroad Company.

Earnings, Operating Expenses, etc., on State Business, Missouri (for 3 Months Ended Sept. 30, 1907).

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings (not including miscellaneous)	150,953.68	114,853.04	265,806.72
2. Operating expenses	111,579.80	133,469.65	245,049.45
3. Net operating revenue	39,373.88	18,616.61	20,757.27
4. Taxes and rentals (revenue basis)	13,375.78	8,830.68	22,206.46
5. Diminution in revenue under law of 1907	9,989.43	.....	9,989.43
Total	23,365.21	8,830.68	32,195.89
6. Net operating revenue, less taxes, rentals and diminution in revenue	16,008.67	27,447.29	11,438.62
7. Bond interest	24,907.02	18,946.21	43,853.23
8. Result on flat revenue basis after deducting bond interest	8,898.35	46,393.50	55,291.85
9. Six per cent on 3 times the assessed value in 1907 (revenue basis)	38,915.56	29,599.33	68,514.89
10. Result on flat revenue basis after deducting 6% on 3 times the assessed value of property	22,906.89	57,046.62	79,953.51

	Freight.	Passenger.	Total.
11. Result on flat revenue basis after deducting bond interest (line 8)	8,898.35	46,393.50	55,291.85
12. Extra cost based on 50% more for freight in proportion to revenue, and 15% more for passenger in proportion to revenue, than on all other business	41,919.82	10,894.83	52,814.65
13. Result of applying basis shown in line 12 to figures in line 11	50,818.17	57,288.33	108,106.50
14. Extra cost on basis of twice as much for freight in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business	77,523.80	17,501.61	95,025.41
15. Result of applying basis shown in line 14 to figures in line 11	86,422.15	63,895.11	150,317.26
16. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	134,490.18	23,600.18	158,090.36
17. Result of applying basis shown in line 16 to figures in line 11	143,388.53	69,993.68	213,382.21
18. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business		31,985.70	.....

19. Result of applying basis shown in line 18 to figures in line 11	.....	78,379.20	.....
243			
20. Result on flat revenue basis after deducting 6% on 3 times assessed value of property (line 10)	22,906.89	57,046.62	79,953.51
21. Extra cost based on 50% more for freight, in proportion to revenue and 15% more on passenger, in proportion to revenue, than on all other business	41,919.82	10,894.83	52,814.65
22. Result of applying basis shown in line 21 to figures in line 20	64,826.71	67,941.45	132,768.16
23. Extra cost on basis of twice as much for freight, in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business	77,523.80	17,501.61	95,025.41
24. Result of applying basis shown in line 23 to figures in line 20	100,430.69	74,548.23	174,978.92
25. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	134,490.18	23,600.18	158,090.36
26. Result of applying basis shown in line 25 to figures in line 20	157,397.07	80,646.80	238,043.87

	Freight.	Passenger.	Total.
27. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business		31,985.70	
28. Result of applying basis shown in line 27 to figures in line 20		89,032.32	

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State's Basis.

1. Freight and passenger Revenue	150,953.68	114,853.04	265,806.72
Miscellaneous earnings	4,035.91	22,620.48	26,656.39
Total Earnings	154,989.59	137,473.52	292,463.11
2. Operating expenses (ton-mile and passenger-mile proportion)	47,121.10	140,648.16	187,769.26
3. Net operating revenue	107,868.49	3,174.64	104,693.85
4. Taxes and rentals (ton-mile and passenger-mile basis)	5,648.70	9,305.63	14,954.33
5. Diminution in revenue under law of 1907	9,989.43		9,989.43
Total	15,638.13	9,305.63	24,943.76
6. Net operating revenue, less taxes, rentals and diminution in revenue	92,230.36	12,480.27	79,750.09
7. Proportion on earnings basis of 3 times assessed value of property in 1907	666,199.95	590,267.49	1,256,467.44
8. Figures on line 6 are as to figures on line 7	13.85%	Nothing	6.35%

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9. Result on flat ton-mile and passenger-mile basis after deducting taxes, rentals, etc. (Line 6)	92,230.36	12,480.27	79,750.09
10. Extra cost based on 30% more for freight per ton-mile and reduced cost based on 10% less for passenger per passenger-mile than for interstate	12,755.51	8,226.70	4,528.81
11. Result of applying basis shown in line 10 to figures in line 9	79,474.85	4,253.57	75,221.28
12. Figures on line 11 are as to figures on line 7	11.93%	Nothing	5.99%
13. Extra cost based on 50% more for freight, per ton-mile and reduced cost based on 20% less for passenger, per passenger-mile, than for interstate	20,990.87	17,215.74	3,775.13
14. Result of applying basis shown in line 13 to figures in line 9	71,239.49	4,735.47	75,974.96
15. Figures on line 14 are as to figures on line 7	10.69%	0.80%	6.05%

246 The attached statement of earnings, operating expenses, etc. of the Chicago, Rock Island & Pacific Railway Company, and the St. Louis, Kansas City & Colorado Railroad Company, for the three months ending September 30th, 1907, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

No. 2993. Kansas City Southern Railway Company.

Earnings, Operating Expenses, etc., on State Business, Missouri (for 6 Months Ending June 30, 1908).

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings (not including miscellaneous)	$38,748.76	$31,865.28	$70,614.04
2. Operating Expenses	25,022.83	27,932.93	52,955.76
3. Net Operating Revenue	$13,725.93	$3,932.35	$17,658.28
4. Taxes and Rentals (Revenue basis)	$978.13	$738.13	$1,716.26
5. Diminution in Revenue under Law of 1907	$2,957.58	.....	$2,957.58
Total	$3,935.71	$738.13	$4,673.84
6. Net Operating Revenue, less Taxes, rentals, and Diminution in Revenue	$9,790.22	$3,194.22	$12,984.44
7. Bond interest	$5,295.38	$4,365.11	$9,660.49
8. Result on flat revenue basis after deducting Bond Interest	$4,494.84	$1,170.89	$3,323.95
9. Six per cent interest on three times assessed value in 1908 (Revenue Basis) is	8,923.38	$7,355.76	$16,279.14
10. Result on flat revenue basis after deducting six per cent on three times assessed value of property	$866.84	$4,161.54	$3,294.70

11. Result on flat Revenue Basis after deducting bond interest (line 8)	$4,494.84	$1,170.89	$3,323.95
12. Extra cost based on 50% more for freight in proportion to revenue, and 15% more for passenger in proportion to revenue, than on all other business	$11,711.60	$3,267.09	$14,978.69
13. Result of applying basis shown in line 12 to figures in line 11	$7,216.76	$4,437.98	$11,654.74
14. Extra cost on basis of twice as much for freight in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business	$22,909.03	$5,346.15	$28,255.18
15. Result of applying basis shown in line 14 to figures in line 11	$18,414.19	$6,517.04	$24,931.23
16. Extra cost on basis of three times as much for freight in proportion to revenue, and 35% more for passenger, in proportion to revenue, as compared with all other business	$43,989.91	$7,340.35	$51,330.26
17. Result of applying basis shown in line 16 to figures in line 11	$39,495.07	$8,511.24	$48,006.31
18. Extra cost based on 50% more for passenger, in proportion to revenue, than on other passenger business		$10,211.43	.....

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	Freight.	Passenger.	Total.
19. Result of applying basis shown in line 18 to figures in line 11	.....	$11,382.32	.....
20. Result on flat revenue basis after deducting 6% on three times assessed value of property (line 10)	$866.84	$4,161.54	$3,294.70
249			
21. Extra cost based on 50% more for freight in proportion to revenue, and 15% more for passenger, in proportion to revenue, than on all other business	$11,711.60	$3,267.09	$14,978.69
22. Result of applying basis shown in line 21 to figures in line 20	$10,844.76	$7,428.63	$18,273.39
23. Extra cost on basis twice as much for freight in proportion to revenue, and 25% more for passenger in proportion to revenue, as compared with all other business	$22,909.03	$5,346.15	$28,255.18
24. Result of applying basis shown in line 23 to figures in line 20	$22,042.19	$9,507.69	$31,549.88
25. Extra cost on basis of three times as much for freight in proportion to revenue, and 35% more on passenger in proportion to revenue, as compared with all other business	$43,989.91	$7,340.35	$51,330.26
26. Result of applying basis shown in line 25 to figures in line 20	$43,123.07	$11,501.89	$54,624.96

27. Extra cost based on 50% more for passenger in proportion to revenue, than on other passenger business		$10,211.43	.....
28. Result of applying basis shown in line 27 to figures in line 20		$14,372.97	.....

250

State's Basis.

1. Freight and Passenger Revenue	38,748.76	$31,865.28	$70,614.04
Miscellaneous earnings	7,533.64	10,493.05	18,026.69
Total earnings	$46,282.40	$42,358.33	$88,640.73
2. Operating Expenses (ton-mile and passenger-mile proportion)	$6,398.53	$35,471.28	$41,869.81
3. Net operating revenue	$39,883.87	$6,887.05	$46,770.92
4. Taxes and Rentals (ton-mile and passenger-mile proportion)	$250.11	$937.32	$1,187.43
5. Diminution in Revenue under Law of 1907	$2,957.58	.....	$2,957.58
Total	$3,207.69	$937.32	$4,145.01
6. Net operating Revenue, less Taxes, Rentals and Diminution in Revenue	$36,676.18	$5,949.73	$42,625.91
7. Proportion on Earnings basis of three times assessed value of property in 1908	$177,663.76	$162,791.46	$340,455.22

	Freight.	Passenger.	Total.
8. Figures in line 6 are as to figures in line 7.....	20.64%	3.65%	12.52%
9. Result of flat ton-mile and passenger mile basis after deducting Taxes, Rentals, etc., (Line 6).....	$36,676.18	$5,949.73	$42,625.91
10. Extra cost based on 30% more for freight per ton-mile and reduced cost based on 10% less for passenger per passenger-mile, than for interstate	$1,885.28	$2,729.64	$844.36
11. Result of applying basis shown in line 10 to figures in line 9	$34,790.90	$8,679.37	$43,470.27
12. Figures in line 11 are as to figures in line 7.....	19.58%	5.33%	12.77%
251			
13. Extra cost based on 50% more for freight per ton-mile and reduced cost based on 20% less for passenger per passenger-mile than for interstate	$3,142.14	$5,600.73	$2,458.59
14. Result of applying basis shown in line 13 to figures in line 9	$33,534.04	$11,550.46	$45,084.50
15. Figures in line 14 are as to figures in line 7.....	18.87%	7.09%	13.24%

252 The attached statement of earnings, operating expenses, etc. of the Kansas City Southern Railway Company, for the six months ending June 30th, 1908, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

No. 2994. St. Louis & Hannibal Railway Company.

Earnings, Operating Expenses, etc., on State Business, Missouri, for Year Ended June 30, 1908.

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings (not including miscellaneous)	87,941.99	52,667.38	140,609.37
2. Operating expenses	72,655.40	53,334.91	125,990.31
3. Net Operating revenue	15,286.59	667.53	14,619.06
4. Taxes—(revenue basis)	3,693.55	1,774.32	5,467.87
5. Diminution in revenue under law of 1907	15,126.02	.....	15,126.02
Total	18,819.57	1,774.32	20,593.89
6. Net operating revenue, less taxes and diminution in revenue	3,532.98	2,441.85	5,974.83
7. Bond interest	16,359.44	9,794.50	26,153.94
8. Result on flat revenue basis after deducting bond interest	19,892.42	12,236.35	32,128.77
9. Six per cent on 3 times the assessed value in 1907 (revenue basis)	43,041.07	25,769.09	68,810.16
10. Result on flat revenue basis after deducting 6% on 3 times assessed value of property	46,574.05	28,210.94	74,784.99

NOTE.—It is apparent from the results above shown that upon neither the revenue nor the ton-mile and passenger-mile theory of expenses can any adequate return on the investment be earned. Further, the state has no figures to present for lack of passenger-miles and ton-miles. It would, therefore, seem to be unnecessary to continue making figures on the assumption of added costs of operation.

255 The attached statement of earnings, operating expenses, etc., of the St. Louis & Hannibal Railway Company for the year ending June 30th, 1908, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

256 No. 2997. Missouri, Kansas & Texas Railway Company.

Earnings, Operating Expenses, etc., on State Business, Missouri, for Six Months, viz., July, August, October, November, and December, 1907, *and January,* 1908.

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings, (not including miscellaneous)	277,416.52	246,368.53	523,895.05
2. Operating expenses	171,910.48	189,381.89	361,292.37
3. Net operating revenue	105,506.04	56,986.64	162,492.68
4. Taxes and rentals (revenue basis)	20,244.94	21,433.45	41,678.39
5. Diminution in revenue under law of 1907	20,222.85	.....	20,222.85
Total	40,467.79	21,433.45	61,901.24

6. Net operating revenue, less taxes, rentals, and diminution in revenue	65,038.25	35,553.19	100,591.44
7. Bond interest	62,439.68	55,490.41	117,930.09
8. Result on flat revenue basis after deducting bond interest	2,598.57	19,937.22	17,338.05
9. Six per cent interest on 3 times the assessed value in 1907 (revenue basis) is	75,469.96	67,070.48	142,540.44
10. Result on flat revenue basis after deducting six per cent interest on 3 times the assessed value of property	10,431.71	31,517.29	41,949.00

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11. Result on flat revenue basis after deducting bond interest (line 8)	2,598.57	19,937.22	17,338.65
12. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger, in proportion to revenue, than on all other business	66,590.77	17,047.46	83,638.23
13. Result of applying basis shown in line 12 to figures in line 11	63,992.20	36,984.68	100,976.88
14. Extra cost on basis of twice as much for freight, in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business	121,883.63	27,482.59	149,366.22
15. Result of applying basis shown in line 14 to figures in line 11	119,285.06	47,419.81	166,704.87

	Freight.	Passenger.	Total.
16. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	212,942.61	37,194.47	250,137.08
17. Result of applying basis shown in line 16 to figures in line 11	210,344.04	57,131.69	267,475.73
18. Extra cost on basis of 50% more on passenger, in proportion to revenue, than on other passenger business		50,677.46	.....
19. Result of applying basis shown in line 18 to figures in line 11		70,614.68	.....
258			
20. Result on flat revenue basis after deducting 6% on 3 times assessed value of property (line 10)	10,431.71	31,517.29	41,949.00
21. Extra cost based on 50% more for freight in proportion to revenue, and 15% more for passenger, in proportion to revenue, than on all other business	66,590.77	17,047.46	83,638.23
22. Result of applying basis shown in line 21 to figures in line 20	77,022.48	48,564.75	125,587.23
23. Extra cost on basis of twice as much for freight, in proportion to revenue, and 25% more for passenger, in proportion to revenue, as compared with all other business	121,883.63	27,482.59	149,366.22
24. Result of applying basis shown in line 23 to figures in line 20	132,315.34	58,999.88	191,315.22

25. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	212,942.61	37,194.47	250,137.08
26. Result of applying basis shown in line 25 to figures in line 20	223,374.32	68,711.76	292,086.08
27. Extra cost based on 50% more for passenger, in proportion to revenue, than on other passenger business		50,677.46	.....
28. Result of applying basis shown in line 27 to figures in line 20		82,194.75	.....

259 State's Basis.

1. Freight and passenger revenue	277,416.52	246,368.53	523,785.05
Miscellaneous earnings	3,547.90	54,885.77	58,433.67
Total earnings	280,964.42	301,254.30	582,218.72
2. Operating Expenses (ton-mile and passenger-mile proportion)	106,622.90	214,694.80	321,317.70
3. Net operating Revenue	174,341.52	86,559.50	260.901.02
4. Taxes and Rentals (ton-mile and passenger mile basis)	12,556.39	24,298.26	36,854.65
5. Diminution in Revenue under Law of 1907	20,222.86	.....	20,222.86
Total	32,779.25	24,298.26	57,077.51
6. Net Operating Revenue, less taxes, rentals and diminution in Revenue	141,562.27	62,261.24	203,823.51

	Freight.	Passenger.	Total.
7. Proportion on Earnings basis of 3 times assessed value of property in 1907	1,273,503.31	1,365,437.92	2,638,941.23
8. Figures on line #6 are as to figures on line #7	11.12%	4.56%	7.72%
9. Results on flat ton-mile and passenger-mile basis, after deducting taxes, rentals, etc. (line 6)	141,562.27	62,261.24	203,823.51
10. Extra cost based on 30% more for freight per ton-mile and reduced cost based on 10% less for passenger per passenger-mile than for Interstate	27,792.69	13,121.39	14,671.30
11. Result of applying basis shown in line 10 to figures in line 9	113,769.58	75,382.63	189,152.21
12. Figures on line 11 are as to figures on line 7	9.00%	5.52%	7.17%
260			
13. Extra cost based on 50% more for freight per ton-mile and reduced cost based on 20% less for passenger per passenger-mile than for Interstate	45,377.89	27,379.27	17,998.62
14. Result of applying basis shown in line 13 to figures in line 9	96,184.38	89,640.51	185,824.89
15. Figures on line 14 are as to figures on line 7	7.55%	6.56%	7.04%

261 The attached statement of earnings, operating expenses, etc. of the Missouri, Kansas & Texas Railway Company for the months of July, August, October, November, and December, 1907 and January, 1908, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

262 Afterwards, to-wit, on the 20th day of February, 1909, a statement of accountants was filed, in words and figures as follows:

No. 2998. Chicago, Burlington & Quincy Railroad Company.

Earnings, Operating Expenses, etc., on State Business, Missouri, for Year Ended June 30, 1908.
Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings (not including miscellaneous)	1,580,529.64	1,611,702.92	3,192,232.56
2. Operating expenses (revenue basis)	1,324,453.83	1,489,746.71	2,814,200.54
3. Net operating revenue	256,075.81	121,956.21	378,032.02
4. Taxes and rentals (revenue basis)	2,487.99	2,798.50	5,286.49
5. Diminution in revenue under law of 1907	112,533.71	.....	112,533.71
Total	110,045.72	2,798.50	107,247.22
6. Net operating revenue, less taxes, rentals and diminution in revenue	146,030.09	124,754.71	270,784.80

	Freight.	Passenger.	Total.
7. Bond interest	#.....	.....	.....
8. Result on flat revenue basis after deducting bond interest	#.....	.....	.....
9. Six per cent on 3 times the assessed value in 1908 (revenue basis) is	409,325.04	417,620.02	826,945.06
10. Result on flat revenue basis, after deducting 6% on 3 times assessed value of property	263,294.95	292,865.31	556,160.26
11. Result on flat revenue basis after deducting bond interest (line 8)	#.....	.....	.....
12. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger, in proportion to revenue, than on other business	#.....	.....	.....
13. Result of applying basis shown in line 12 to figures in line 11	#.....	.....	.....
263			
14. Extra cost on basis of twice as much for freight, in proportion to revenue, and 25% more on passenger in proportion to revenue, as compared with all other business	#.....	.....	.....
15. Result of applying basis shown in line 14 to figures in line 11	#.....	.....	.....

All calculations based on Bonded Indebtedness have been omitted because the C. B. & Q. R. R. Company's statement fails to show amount of interest chargeableto Missouri.

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16. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more for passenger in proportion to revenue, as compared with all other business	#.....	.....	.....
17. Result of applying basis shown in line 16 to figures in line 11	#.....	.....	.....
18. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business	#.....	.....	.....
19. Result of applying basis shown in line 18 to figures in line 11	#.....	.....	.....
20. Result on flat revenue basis after deducting 6% on 3 times assessed value of property (line 10)	263,294.95	292,865.31	556,160.26
21. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more on passenger in proportion to revenue, than on all other business	484,129.29	99,127.09	583,256.38
22. Result of applying basis shown in line 21 to figures in line 20	747,424.24	391,992.40	1,139,416.64
23. Extra cost on basis of twice as much for freight, in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business	888,804.81	158,205.70	1,047,010.51

All calculations based on Bonded Indebtedness have been omitted because the C. B. & Q. R. R. Company's statement fails to show the amount of interest chargeable to Missouri.

	Freight.	Passenger.	Total.
24. Result of applying basis shown in line 23 to figures in line 20	1,152,099.76	451,071.01	1,603,170.77
264			
25. Extra cost on basis of 3 times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	1,533,154.93	212,455.77	1,745,610.70
26. Result of applying basis shown in line 25 to figures in line 20	1,796,449.88	505,321.08	2,301,770.96
27. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business		286,304.04	.....
28. Result of applying basis shown on line 27 to figures in line 20		579,169.35	.....
State's Basis.			
1. Freight & Passenger revenue	1,580,529.64	1,611,702.92	3,192,232.56
Miscellaneous earnings	31,743.33	347,600.91	379,344.24
Total	1,612,272.97	1,959,303.83	3,571,576.80
2. Operating expenses (ton-mile and passenger mile proportion)	721,481.45	1,619,741.58	2,341,223.03
3. Net operating revenue	890,791.52	339,562.25	1,230,353.77
4. Taxes and rentals (ton-mile and passenger-mile basis)	1,026.00	4,466.59	5,492.59

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5. Net operating revenue, less taxes and rentals	891,817.52	344,028.84	1,235,846.36
6. Diminution in revenue under law of 1907	112,533.71	.....	112,533.71
7. Net operating revenue, less taxes, rentals and diminution in revenue	779,283.81	344,028.84	1,123,312.65
8. Proportion on a gross earnings basis of 3 times assessed value of property in 1908	6,960,333.63	8,459,809.64	15,420,142.27
9. Figures in line 7 are as to figures in line 8	11.19%	4.06%	7.28%
10. Result on flat ton-mile and passenger-mile basis after deducting taxes, rentals and diminution in revenue (line 7)	779,283.81	344,028.84	1,123,312.65
11. Extra cost based on 30% more for freight per ton-mile, and reduced cost based on 10% less for passenger per passenger-mile, than on interstate	187,503.65	91,710.10	95,793.55
12. Result of applying basis shown in line 11 to figures in line 10	591,780.16	435,738.94	1,027,519.10
13. Figures in line 12 are as to figures in line 8	8.50%	5.15%	6.66%

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14. Extra cost based on 50% more for freight per ton mile and reduced cost based on 20% less for passenger per passenger mile than on interstate	306,391.83	192,943.95	113,447.88

	Freight.	Passenger.	Total.
15. Result of applying basis shown in line 14 to figures in line 10	472,891.98	536,972.79	1,009,864.77
16. Figures in line 15 are as to figures in line 8	6.79%	6.34%	6.55%

267 The attached statement of earnings, operating expenses, etc., of the Chicago, Burlington & Quincy Railroad Company for the year ending June 30, 1908, correctly shows the results on the various assumptions therein set forth.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
F. A. HAMILTON.

268 No. 3002. Kansas City, Clinton & Springfield Railway Company.

Earnings, Operating Expenses, etc., on State Business, Missouri, for Year Ended June 30th, 1908.

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings, (not including miscellaneous)	45,003.15	47,646.80	92,649.95
2. Operating expenses	26,024.02	58,052.41	84,076.43
3. Net Operating revenue	18,979.13	10,405.61	8,573.52
4. Taxes	2,414.04	2,411.86	4,825.90
5. Diminution in revenue under law of 1907	2,970.21	.....	2,970.21
Total	5,384.25	2,411.86	7,796.11

6. Net Operating revenue, less taxes, and diminution in revenue	13,594.88	12,817.47	777.41
7. Bond interest	23,881.78	25,287.48	49,169.26
8. Result on flat rate revenue basis after deducting bond interest	10,286.90	38,104.95	48,391.85
9. Six per cent on 3 times the assessed value in 1907 (revenue basis) is	33,846.76	35,839.01	69,685.77
10. Result on flat rate revenue basis after deducting 6% on 3 times the assessed value of property	20,251.88	48,656.48	68,908.36

269 NOTE.—It is apparent from the results above shown that upon neither the revenue, nor the ton-mile and passenger-mile theory of expenses can any adequate return on the investment be earned. Further, the state has no figures to present for lack of passenger miles and ton miles. It would, therefore, seem to be unnecessary to continue making figures on the assumption of added costs of operation.

270 The attached statement of earnings, operating expenses, etc., of the Kansas City, Clinton & Springfield Railway Company for the year ending June 30, 1908, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

No. 3003. Chicago Great Western Railway Company.

Earnings, Operating Expenses, etc., on State Business, Missouri (for 6 Months Ended December 31, 1907).

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings, (not including miscellaneous earnings.....	$29,129.36	$38,105.03	$67,234.39
2. Operative Expenses (revenue basis).....	22,235.64	36,996.98	59,232.22
3. Net Operating Revenue	$6,893.72	1,108.05	8,001.77
4. Taxes and Rentals (Revenue basis).....	1,374.49	3,312.25	4,686.74
5. Diminution in revenue under law of 1907.....	1,893.41	.....	1,893.41
Total.....	$3,267.90	3,312.25	6,580.15
6. Net Operating Revenue less taxes, rentals and diminution of revenue	3,625.82	2,204.20	1,421.62
7. Bond Interest	7,164.08	9,375.81	16,539.89
8. Result on flat revenue basis after deducting bond interest (lines 6 and 7).....	3,538.26	11,580.01	15,118.27
9. Six per cent on 3 times the assessed value in 1907 (arrived at on earnings basis) is.....	8,057.70	10,545.31	18,603.01
10. Result on flat revenue basis after deducting 6% on 3 times the assessed value of the property (lines 6 and 9)	4,431.88	12,749.51	17,181.39

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11. Result on flat revenue basis after deducting Bond Interest (see Line 8)	$3,538.26	11,580.01	15,118.27
12. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger, in proportion to revenue, than on all other business	9,347.72	3,765.42	13,113.14
13. Result of applying basis shown in line 12 to figures in line 11	12,885.98	15,345.43	28,231.41
14. Extra cost based on twice as much for freight, in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business	17,760.67	6,090.35	23,851.02
15. Result of applying basis shown in line 14 to figures in line 11	21,298.93	17,670.36	38,969.29
16. Extra cost based on three times as much for freight, in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	32,279.47	8,314.21	40,593.68
17. Result of applying basis shown in line 16 to figures in line 11	35,817.73	19,894.22	55,711.95

273

18. Result on flat revenue basis after deducting 6% on 3 times the assessed value of the property (see line 10)	$4,431.88	12,749.51	17,181.39

	Freight.	Passenger.	Total.
19. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger, in proportion to revenue, than all other business (line 12)	9,347.72	3,765.42	13,113.14
20. Result of applying basis shown in line 19 to figures in line 18	13,779.60	16,514.93	30,294.53
21. Extra cost based on twice as much for freight, in proportion to revenue, and 25% more on passenger, in proportion to revenue, as compared with all other business	17,760.67	6,090.35	23,851.02
22. Result of applying basis shown in line 21 to figures in line 18	22,192.55	18,839.86	41,032.41
23. Extra cost based on three times as much for freight in proportion to revenue, and 35% more on passenger, in proportion to revenue, as compared with all other business	32,279.47	8,314.21	40,593.68
24. Result of applying basis shown in line 23, to figures in line 18	36,711.35	21,063.72	57,775.07

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State's Basis.

1. Freight and Passenger Revenue	$29,129.36	$38,105.03	$67,234.39
Miscellaneous earnings	837.23	6,777.18	7,614.41
Total Earnings	29,966.59	44,882.21	74,848.80

2. Operating Expenses ton-mile & passenger mile proportion	13,723.25	40,509.70	54,232.95
3. Net Operating revenue	16,243.34	4,372.51	20,615.85
4. Taxes and Rentals (ton mile and passenger mile proportion)	848.30	3,626.67	4,474.97
5. Diminution in revenue under laws of 1907	1,893.41	.....	1,893.41
Total	2,741.71	3,626.67	6,368.38
6. Net Operating Revenue, less taxes, rentals and diminution in revenue	13,501.63	745.84	14,247.47
7. Proportion, on a gross earnings basis, of three times assessed value of property in 1907	138,260.82	206,940.57	345,201.39
8. Figures in line 6 are as to figures in line 7	9.76%	0.36%	4.13%
275			
9. Result on flat ton mile and passenger mile basis, after deducting taxes and rentals, (line 6)	$13,501.63	$745.84	$14,247.47
10. Extra cost based on 30% more for freight, per ton mile and reduced cost based on 10% less for passenger, per passenger mile, than on Interstate	4,037.42	2,843.01	1,194.41
11. Result of applying basis shown in line 10 to figures in line 9	9,464.21	3,588.85	13,053.06

	Freight.	Passenger.	Total.
12. Figures in line 11 are as to figures in line seven.....	6.84%	1.58%	3.78%
13. Extra cost based on 50% more for freight, per ton mile, and reduced cost based on 20% less on passenger, per passenger mile, than on interstate.....	6,165.52	5,964.00	201.52
14. Result of applying basis shown in line 13 to figures in line 7	7,336.11	6,709.84	14,045.95
15. Figures in line 14 are as to figures in line 7.....	5.30%	3.24%	4.07%

276 The attached statement of earnings, operating expenses, etc., of the Chicago, Great Western Railway Company for the six months ending December 31st, 1907, correctly shows the results on the various assumptions set forth therein.

For the Railroads: JAS. PEABODY.
F. P. JOHNSON.
For the State: A. P. TALIAFERRO.
T. A. HAMILTON.

277 Afterwards, to wit, on the 6th day of March, 1909, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And also Numbers 2989 to 3004, inclusive, and 3006.

Order.

By consent of parties, in accordance with agreements heretofore made and not recorded, it is on this March 6th, 1909, ordered:

1. The answers heretofore filed by the Attorney General and Railroad Commissioners, to which replications were filed, shall be treated and adopted by the other defendants who heretofore demurred herein, as their answers duly replied unto.

2. All the evidence taken before the Special Master and in open court, regardless of the particular case in which it was offered, shall be regarded as having been taken and offered in each of the cases tried.

(Signed) SMITH McPHERSON, *Judge.*

We consent to the above order.

FRANK HAGERMAN,
Solicitor for Complainant.
E. W. MAJOR,
Att'y General.
SANFORD B. LADD,
JOHN KENNISH,
F. W. LEHMANN,
Solicitor for Appearing and Answering Defendants.

278 The evidence taken before the Master in the case of the Chicago, Burlington & Quincy Railroad Company, #2998, and designated in the certificate of the Trial Judge as

"Five volumes designated as in case No. 2998, marked Volumes I to V both inclusive,"

is in the words and figures as follows: to-wit:

279 VOLUME I.

Meetings:

Apr. 11		
June 11, 1906.		page 281
Sept. 7		308
17		331
18		331
19		369
20		426
21		527

Witnesses:

C. I. Sturgis,	311

Exhibits offered:

Ex. 1	324
2	372
3	394
4	469
5	527
6	543

280 Circuit Court of the United States, Western Division, Western District of Missouri.

— —

VS.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendant.

Record of Proceedings at Hearing Before the Special Master.

In pursuance of an order of reference made and entered by said Court in the above entitled cause on the 5th day of March, 1906, and in pursuance of notice heretofore given to counsel of the respective parties herein, the hearing of the matters in said order referred was duly begun and had before me, E. L. Schofield, Special Master, at the Southern Hotel, in the City of St. Louis, State of Missouri, on this 11th day of April, 1906.

At said time and place I was attended by counsel representing the respective partoes.

Thereupon the following proceedings were had:

After a conference between counsel representing the respective parties, concerning the preparation of certain statements, etc., by certain of the Defendants, the Master ordered that the hearing should be continued to June 11, 1906.

281 ST. LOUIS, *June* 11, 1906.

Met, pursuant to adjournment as above, on June 11, 1906, at the Federal Building, in the City of St. Louis, Missouri.

At said time and place I was attended by counsel representing the respective parties.

Thereupon the following proceedings were had:

It is agreed by and between the parties through their respective counsel, that the proceedings at all hearings before the Special Master shall be taken down in short-hand by Miss Laura M. Eagan, a competent stenographer, who shall thereafter transcribe the same in typewriting, as in and by said order of reference directed, and deliver to the Master the first or original sheets thereof. Thereupon the said Laura M. Eagan is by the Master duly sworn to faithfully and correctly take down and make in short-hand a full record of the proceedings now and hereafter had before the Master, and to transcribe and deliver same in typewriting to the Master, all without prejudice, partiality or favor, and according to the best of her ability.

Mr. HADLEY: At the first hearing in this matter I was unavoidably prevented from being present. It is my undersanding, from the statement of my associates, that at that time your Honor directed the five roads, the Santa Fe, the Missouri Pacific, the Wabash, the Chicago & Alton and the Burlington, to have a statement prepared to be submitted at this time, in order that after an
282 examination of that statement counsel might determine whether they could agree upon the two roads to be tried first, with the idea that they might be typical of the railroad situation in the State, and be determinative of the entire litigation of the State; or if counsel could determine from that trial whether it would be advisable to try any other railroad or not.

We are now informed that only one of those roads has prepared a statement, the Wabash Railroad, and, consequently, we are handicapped in determining, from our standpoint, which roads should be tried first, because we do not know the result of the examination, from the standpoint of the Companies.

But after some conference between counsel, it has been suggested, and seems to be mutually satisfactory, that we should proceed first, in the order named, with the trial of the Burlington, the Wabash and the Missouri Pacific; and that the statements of those roads that have not yet been prepared, will be prepared with all possible expedition.

I think in fairness to the Master and to the counsel for the state, these statements should be prepared at the earliest possible moment, and then we can determine whether it will be necessary to try any other cases than those mentioned.

But it is not the understanding that the trial of these cases is determinative of the litigation, or that they are admitted to be test cases; but that we may all understand the railroad situation, as shown by the three roads mentioned.

283 Mr. HAGERMANN: I think in a general way that expresses the situation. The Wabash statements are all ready and

can be turned over to General Hadley at any time. The Burlington statement is in rough form, but can be completed within a few days, and then we will give him that statement.

I understand General Hadley has two experts, and by the time those experts are ready with those statements, the Missouri Pacific statement will be ready. It will facilitate the hearing very much to have the experts go through the accounts, and then when we get the controverted statements we can be prepared to take the testimony.

The MASTER: Let us see where we are: At the first hearing in April, it was suggested that we could not proceed with the hearing of the testimony until opportunity could be given the roads that they expected to try to tabulate a large amount of the testimony, and an adjournment was taken at that time until June 11th in order to give those five roads the opportunity which they desired to prepare these statements. It was thought by counsel at that time, that would be abundance of time. It was the suggestion of counsel for the roads themselves, that that would be abundance of time; and I cannot refrain from expressing some disappointment that all the roads are not ready with those statements. It seems only one is ready. From the statements of counsel now, I cannot perceive that we have made much advancement since the meeting held in April last.

Mr. HAGERMANN: The Wabash statement is ready, if counsel for the State are ready to try that case. The Burlington state-
284 ment will be ready in the course of two or three days.

The MASTER: Mr. Hadley, two courses were suggested to be followed respecting witnesses introduced on the part of the Complainants: One was, that after the introduction of the testimony, that is to say, that part of the testimony which involved the examination of records, books, etc., that opportunity to be given the representatives of the State to make such examination as they might desire, in order to better fit them for the cross-examination of the witnesses, and then cause the witnesses to return before the Master for that purpose. The other was, that they should have an opportunity of examining these records, by expert witnesses appointed by themselves, in order to beforehand qualify them to cross-examine these witnesses. Have you determined which course you wish to pursue in that matter?

Mr. HADLEY: It has seemed to my associates and myself, that no useful purpose will be accomplished in undertaking to cross examine witnesses for the complainants until our experts have had an opportunity to examine these books of account and other papers, upon which these tabulations which they expect to prepare, are made.

The MASTER: That I understand perfectly. But have you agreed between yourselves that before the introduction of any testimony in chief you shall qualify yourselves, or afterwards?

Mr. HADLEY: That is immaterial to us. I thought it would be more satisfactory for the witnesses for the Complainants to
285 give their testimony and then cross examine them at the time they give their testimony. To illustrate if they should

testify now, we would be unprepared to controvert or cross-examine as to the correctness of any of their statements; and to cross-examine them two or three weeks later on would involve some complications, or handicap us, in that their testimony would not be fresh in our minds, and would not all be before the Master. I think the proper way would be to have it all heard at once.

I would say further, along the suggestion your Honor made, that in March when the appointment of a Special Master came up, it was my understanding then, from the statements of counsel, that they were practically ready to proceed then; and from the statements reported to me that had been made in April, I applied to Mr. Hagerman some three weeks ago, to see if we could not get the statements then, so our experts could get them and be prepared to cross examine the witnesses to-day. I feel the same disappointment that the Master has expressed, and hope we will not be subjected to any further delay.

Mr. HAGERMANN: His expert can start in today on one of the statements, and probably in a day or two on the others?

The MASTER: Have you agreed upon what additional time you want to prepare the testimony in chief on the part of the five roads?

Mr. HAGERMANN: I don't think so, because it will depend
286 upon how long General Hadley's experts will be upon those accounts.

Mr. HADLEY: Do I understand that we can have the result of the tabulation today:

Mr. HAGERMANN: For the Wabash, yes; and in the other case in a day or two.

Mr. HADLEY: It is impossible for us to direct our experts to the books until we have seen their tabulations, as they will determine the theory of the case.

Mr. MINNIS: We can submit tabulation showing, as we claim, enforcement of those rates, and he can refer his expert to the bills-of-loading from which these are compiled. There are a thousand and one entries in arriving at this result, which the expert will have to go through.

Mr. HAGERMANN: I think it will be well to go over that with Mr. Penney.

Mr. HADLEY: I think that will be a good idea, to have the expert go on the stand and examine him as nearly as possible to show the manner in which the statements have been prepared, and not examine as to the correctness, or the elimination of the possibility of mistake, or the elimination of the possibility of incorrect railroad accounting, but simply how the accounting is prepared.

Mr. LADD: My idea, was, suppose you put on these gentlemen who have prepared these statements, and examine as to the method of their tabulation, what books they refer to, and, in a general way, the method of keeeping the accounts. Then give us an opportunity to ask those witnesses some questions. I thought it might be an aid to our experts.

287 Mr. HAGERMANN: Mr. Minnis thought, suppose you and himself were to take up those statements——

Mr. MINNISS: It will be more satisfactory for our men to say how they arrived at those figures. I think we can accomplish a great deal more in this way.

Mr. LADD: I suppose any competent expert might take up those papers and learn a great deal from them.

Mr. LATHROP: In behalf of the Santa Fe, I wish to say your Honor, you will recall that at the April hearing I stated to you, in the presence of counsel, that the Santa Fe, as one of the five roads, was somewaht handicapped at the present time in coming immediately forward, or forward up until the 11th of June, with the preparation of our statement, for the reason that by designation of the State authorities of Kansas, and of the different railroads in the state of Kansas, we had been selected to carry the laboring car in that litigation.

The MASTER: I remember that very well.

Mr. LATHROP: Our entire Auditing and Statistical force not only were, but they are still engaged on that work. That was my statement then, and which I have repeated to Genl. Hadley today, as he was not present at that meeting, which was satisfactory to him, as a reason why we were not ready today. So if it becomes necessary, after those other three roads have their cases put in—if it is necessary in order to reach a final determination as to the principal involved in these cases, for us to prepare our statement, we shall do it. I thought it was fair to make this statement in order that it might appear upon the record that we really were not
288 in default, because we have been steadily at work on the Kansas case.

Mr. HADLEY: I think it is important we should not have any misunderstanding on that fact. Counsel for the State do not desire to suggest to your Honor, or opposing counsel, that they should be satisfied with the trial of these three cases. In the order of April 11th, it -as suggested that on the 11th of June the statement of local earnings upon those five roads should be filed. That has not been done. We cannot determine whether we want to try more than three of these roads, until we see those statements. It may be that the statement of the Santa Fe and the statement of the Alton will cause the representatives of the State to ask your Honor to go at once into the trial of the others. It may be that as soon as we have examined the statements of the Wabash, Burlington and Missouri Pacific, we will at once ask your Honor to permit our experts to go into an examination of the other two lines.

In the understanding had upon the 11th of April, whether in an order, or in an informal way, these statements were to be filed here today, and that understanding should be adhered to and those statements filed, if not in a day, or a week, than at the earliest possible moment. I think we are entitled to have the statements of all the five roads filed at the earliest possible moment they can be prepared. I am satisfied to proceed with the trial of the three roads named, but I think we should have the statements of all five roads.

289 The MASTER: You are not prepared to agree with the suggestion of Mr. Lathrop, that the statement of the Santa Fe may be delayed until after the trial of the other three roads?

Mr. HADLEY: No, your Honor, I think we should have the statements from each of these five roads at the earliest moment they can be prepared. It may be that when we see those statement- we shall not care to proceed with the trial of those two. But we agreed upon these five roads as representing the railroad situation in the State of Missouri, and it was understood that these five statements should be presented at this meeting.

Mr. CLARDY: I did not understand that the statements of the five roads should be presented at this time. My understanding was, that the Attorney General stated that the trial of any two of the five cases would be satisfactory to him. One of the Gould lines had been selected, and we did not suppose that two of them would be required, and so we made no preparation for the Missouri Pacific; we came here confidently expecting that the Wabash and some other road would be selected. Now Mr. Hadley, selects to proceed against the Missouri Pacific. I do not offer any objection; I only want to get ready; and I cannot get ready in a few days.

The preparation of this statement not only involves considerable money, labor that has to be paid for, but it requires considerable time to get it. I propose to get it, but it can be done only by
290 the employment of additional 10 clerks. I propose to get it and file it just as soon as I can. But it will certainly take several weeks.

The MASTER: That was all gone over fully and thoroughly at the first meeting of the Master with counsel, and it was thought probable at that time that not all of the five cases would be tried. But my distinct recollection is that five roads would be selected, and from the five so selected the Attorney General might agree that less than the five might be selected for trial.

Mr. CLARDY: My understanding was, that these roads would make preparation, such as they wanted to make, and they were to select the two roads that would be tried.

The MASTER: And now the trouble is, that they cannot make the selection until those preliminary statements are prepared.

Mr. CLARDY: It is not the state that makes the selection, but the Railroads.

The MASTER: That was also suggested, and the remark of the master at the time was, that it seemed to me counsel for the roads would virtually take the matter out of the hands of the Attorney General, by saying "ready" in one case, and "not ready" in the other, and the Master would keep on calling cases until one road announced "ready for trial." But, at any rate, the five railroads were supposed to have these preliminary statements ready on the 11th of June, and that is why the adjournment was taken until this time.

291 Mr. CLARDY: They had it done sufficiently to advise with each other and make the selection of the two roads. But I do not say that the representatives of the state present assented to

that selection. Mr. Hagermann understood the Attorney General to agree to the proposition I have stated. They disclaim, as I recollect, any knowledge or information on that subject from Mr. Penney and Mr. Ladd. I only state it as I remember it, and that for the purpose of saying, in perfect good faith, I propose to have the statement of the Missouri Pacific, which is brought in now and which I assumed would not be brought in because of the selection by the lawyers of the Wabash, just as soon as I can get it; and will spare no time and no necessary expenditure of money to get it. But this gentlemen who represents the Wabash, Mr. Minnis, says it requires considerable time and a great deal of extra money, and I cannot be expected to get it in a weeks or two. I understood that I would be expected to get it by the time the trial of the other two cases was over, and I think that should be time enought. After these other statements have been examined it won't take long to examine a new one.

Mr. HADLEY: Your statement is satisfactory enough, but I simply want to have the original understanding carried out.

Mr. LADD: It is a surprise to us, because Mr. Clardy said he had had men at work for sixty days at that time, and wanted sixty days more.

292 The MASTER: It seems that counsel for the opposing parties have agreed that the cases of only five roads shall be tried. They may hereafter agree upon a lesser number than five, but if they should the cases to be tried shall be selected from the five. That is as far as the agreement has gone, as I understand it.

Mr. LATHROP: I can not permit that statement to go unchallenged so far as the Santa Fe road is concerned, for this reason: in the conference this afternoon, when the suggestion was made by Col. Parker that one railroad had taken the laboring car in the cases in Kansas, of a similar character, I answered that the Santa Fe was that one. Mr. Hadley said he thought it was abundant excuse for the Santa Fe not being ready at the present time, and it was suggested that the Burlington and the Wabash would be the roads selected here. I understood we were to select two out of the five, and that any two would be satisfactory to the state.

Then after further conference between counsel for the state, Mr. Hadley returned and said that in addition to the Burlington and the Wabash, for certain reasons which were good and sufficient to them, and which he explained to us, the Missouri Pacific also should be included. And when we left the conference room we understood—at least I believe my associates understood—that the trial of those three cases should be first had and concluded, and then it should be determined by counsel for the State on their part, and by counsel for the Railroads on their part, whether the record in those cases

293 was satisfactory to both parties upon which to predicate a final decree and a final adjudication, if necessary, in the Supreme Court of the United States.

It was with that understanding that I came in, and I think that Mr. Hagermann, and the other Railroad representatives, understood the result of that conference exactly as I did.

Now, then, as Mr. Clardy has suggested, the preparation of these statements is a very laborious and a very expensive proceeding. Here are three roads that are certainly typical, so far as local business in Missouri is concerned. They are the roads, if any roads, that earn compensation on local business.

The MASTER: What roads do you refer to?

Mr. LATHROP: The Wabash, the Burlington and the Missouri Pacific, whose percentage of local traffic handled, I undertake to say, is greater than all of the other eighteen roads. If those roads cannot earn a compensatory sum from these local rates, certainly the roads that have but little business cannot.

So, therefore, it seems to me nothing but fair that the expense of the preparation of these statements by the other roads ought, in the interest of justice and fairness, be postponed until the statements of these three roads have been examined first by the experts, and then submitted to the scrutiny of the Master upon testimony, and then a determination reached by counsel for the State and the Railroads, respectively, in view of the evidence as to whether or not they are typical. If so, then those cases will proceed to final adjudi-
294 cation, and be the test cases upon which the validity of this law is to stand or fall. What would be the results if we should be compelled when we complete our Kansas work to prepare this statement asked for? We would go ahead and, say at an expense of $6,000 or 10,000—I don't know how much—prepare statements, get them up, have them in readiness; and then, when we get through with these other three roads, the Attorney General and his associates would say, "We don't care for your statement; these three roads are typical of the conditions in this state, and we are satisfied they shall be made the test cases." And the railroads also are satisfied. Then those cases go on to final hearing, and the five or ten thousand dollars are absolutely wasted, and the time of the men employed in getting up those statements would be entirely wasted, and the case not expedited at all.

It does not seem to me that is fair. I know your Honor does not want anything but what is fair, and I do not think the Attorney General and his associates want anything but what is fair. We are all trying to get at the truth of this, and save expenses. Instead of trying eighteen cases, we have agreed to try three typical cases, upon which this law shoul- be adjudicated and determined whether it is good or bad.

The MASTER: That appeal would certainly be very strong to opposing counsel, in an effort to make some sort of an agreement to try less than the whole number of cases. But the Santa Fe railroad has commenced its proceedings in this court just as the other roads, and I cannot see how the court or the Master, could relieve the
295 situation except by agreement of Counsel. In the absence of such agreement I can only say, "Prepare your case for trial."

Mr. LATHROP: But this is a tentative agreement, not binding upon anybody. Try these cases and it may be that as a result of that trial, it is not at all unlikely that from the standpoint of the State, and from the standpoint of the Railroads, those three cases will be typical

of the railroad situation in the State of Missouri. Those are the most favorable cases, so far as the State is concerned. There is the change that they would be willing to stand by those three cases, and we would be willing to stand by them. The only object in selecting these three roads was to save the expense to the other railroads of preparing these expensive statements.

Why not let this be carried forward in the probability that in due time—neither one to be bound now—this law shall stand or fall by what is shown in these three cases.

No injury is done to any one, for the reason that if, upon the completion of the hearing in three cases, it is necessary to go on and get even fifteen addition- statements, the delay would not be over sixty or ninety days, and in a controversy of this magnitude this amount of time is not reasonable: I am satisfied your Honor would be exercising wise discretion, perfectly within the purview of the order, and one the Judge of the Court would make, if you felt unwilling to make such an order in this case, that upon matters between Counsel, about which there is no dispute, that the statements of the other two roads (or the other fifteen roads) might well be held in
296 abeyance until the testimony is in on the three roads, which all agree are typical as to the handling of the local business in this state.

Mr. HADLEY: There is no question that I understand is now before your Honor for decision, or that constitutes a difference between Counsel. All that is now urged here is that the Santa Fe is asking to be relieved from what it was clearly understood, upon the 11th day of April, it should do. This appeal that is now made might have been timely then, but I don't see how it is timely now. It is true we have agreed to proceed with the trial of the three cases, but that understanding never considered for a moment that those other two roads would be relieved of preparing and filing their statements with all convenient speed. It was the understanding of Mr. Hagermann expressed to me three weeks ago, that these five roads were preparing their statements; and I sought then the privilege of having our experts go to some two of those lines, in order that we should be prepared to proceed today.

If we go forward with the trial of the two roads, and then be obscure in our minds whether we have a typical case, then we should have to come and ask your Honor to compel the Alton and the Santa Fe to prepare their statements.

There should be no delay any more than the delay necessary in a suit on a promissory note. The preparation of those accounts, as shown in these other maximum rate cases, is made by the clerks in the office where the accounts are kept. How can a clerk in Wichita, or Topeka, have anything to do with the expense of handling the local business in the state of Missouri.
297 The local business of the Alton and the Santa Fe may not be and probably is not as heavy, but I think we are entitled to have those statements as soon as they can be prepared. Then we can proceed with the trial of those roads immediately after the other

trials, and not be compelled to await an examination which it may take three months to make.

Mr. Lathrop is asking that a new element be introduced into the understanding, which has not heretofore been mentioned.

Mr. JACKSON: He is financially interested in preparing a statement for the Santa Fe, which our company would not be. It shows how differently people can get ideas about a matter. I understood in the other room, before we came in here, before the explanation of the situation the Santa Fe was in, that we would take up the three cases, and then there would not be any other work.

Mr. HADLEY: I said I would not insist upon the Santa Fe being one of the roads to be tried now.

Mr. JACKSON: I understood there was to be a postponement of any work on the others until you had determined the matter of whether it would be satisfactory to rest the whole matter upon these three cases. Of course, gentlemen will have different understandings of the same thing, but that was the impression made upon my mind.

Now, in the interest of fair dealing all around—and I do not mean any implication—but to relieve the parties of considerable burden, as Mr. Lathrop has already indicated what that amounts to in dollars and cents, costing the company $5,00- to $10,000—
298 because it is not the character of work that General Hadley seems to imagine—that certain companies along the line in Missouri can get up, in the auditing Department,—but it practically doubles the force in the offices in order to get up these statements.

Mr. HADLEY: Didn't you state in the petition filed for your company what your earnings are and what the cost of distribution is.

Mr. JACKSON: We state the proportions and the change of making anything out of it. We state the result. But so far as preparing a tabulated statement in order to present it as a basis for examination and cross-examination there is no petition or bill which states that. Your honor has stated this is not a matter for your Honor to determine, but largely one for Counsel to agree upon. I believe you have the power, if you wish to exercise it, which I do not think will be necessary because Counsel are disposed to be reasonable.

Here is the idea I have in mind. I wish to submit it to General Hadley, and see if it is not a fair and reasonable method to pursue in order to avoid this unnecessary expenditure of $5,000 to $10,000 if it should turn out not necessary to expend it. Not require the Santa Fe to prepare its statement now, but let the other cases progress until the state can examine with their experts the books and statements of the three companies until they find it is necessary to go forward, and they declare "We now so advise." Wouldn't that be a reasonable position to put the matter in? I ask General Had-
299 ley to consider that. That whenever this matter has made sufficient progress to enable Counsel for the State to determine whether it is necessary that these statements should be prepared, they should then notify these roads.

The MASTER: The attitude of the Master can be determined by the statements contained in the order, where it is stated he shall hear such cases as shall, at the beginning of the inquiry, be agreed

to be heard: now you have not agreed. You have limited it to five, and that is as far as the agreement goes.

Mr. HAGERMAN: We all thought we had agreed, when we were out in the other room. Possibly I am at fault about the Missouri Pacific not being ready because I said to Colonel Blodgett and Mr. Clardy that the suggestion had passed between the Attorney General and myself that he might invite criticism, and we might invite criticism, if we took the two Gould roads in the state; and thereupon the work on the Wabash proceeded.

We may agree that the statement of the Burlington is completed, because it is only a matter of a few days when it will be finished. The Wabash and the Burlington are ready. The Missouri Pacific was to be added, so by the time the two experts General Hadley has get through with that examination, they can go to work upon the Missouri Pacific. Counsel for the state could determine after they got through with those statements, if they want to try the Missouri Pacific. Now the only thing left is the statements for the other two roads.

300 Mr. HADLEY: Counsel states it is not necessary to prepare those statements because trials are not insisted upon. We think the statements should be prepared, although we do not expect to try them until after three cases are tried.

The MASTER: As I understand you, you are unable to say now, until the Missouri Pacific and the Santa Fe and the Alton prepare their statements, as to whether you will want to try those cases or not. You cannot determine that until you see the statements.

Mr. HADLEY: I cannot determine whether I want to try those, in addition to the other three. We have all agreed to proceed now with the trial of the Burlington, the Wabash and the Missouri Pacific, and those in the order named. The Burlington and the Wabash being examined and tried first.

Now the only question of difference is this: you ordered upon the 16th of April that the Santa Fe, Alton and other three lines file their statements today. They haven't done it. They have appealed to me now that I do not insist upon that order being carried out. I think they should go ahead and prepare their statements as soon as it can be done, because, whether we want to try those cases must be based upon a proposition of comparison. We cannot have a basis of comparison until we have their reports to compare with the others. We have agreed upon the three cases to be tried, and we can confer with reference to these other matters of difference.

Mr. HAGERMANN: We have agreed, within the meaning of
301 the order, as to the trial of these three cases. Now the question is whether we should be compelled to prepare these other statements.

The MASTER: I understand from Mr. Clardy that the Missouri Pacific has made no substantial progress in the preparation of the statement required.

Mr. CLARDY: That is correct.

The MASTER: The Wabash is ready and the Burlington nearly so.

Mr. HAGERMANN: For the purpose of this discussion you may say the Burlington is ready.

The MASTER: Now the question is, in what position to leave the Alton and the Santa Fe? Whether they shall proceed, or whether the Attorney General shall agree to the suggestion of Mr. Lathrop and Mr. Scarritt, that the making up of these statements may be postponed until the testimony shall have been — in the other three cases.

Mr. HADLEY: I am willing to admit that their statements shall not be required to be prepared until we have examined these other statements, but that will be done within twenty-four hours.

Now how do we know that the Burlington and the Wabash are typical, until we know what the statements of the Santa Fe and the Alton show? The understanding of the order of the 16th of April has never been questioned, and is not now, and was never asked to be set aside until the present time, and I ask that it be carried out; but I am not going to be unreasonable in insisting on how
302 soon those statements shall be prepared. However, I think we are entitled to see the statements of five of these roads, as soon as they can be prepared.

The MASTER: Will you be ready to proceed to trial in any case until the statements in all those five cases are submitted to you?

Mr. LATHROP: He has said he expects to try three cases, the Wabash, the Burlington, and the Missouri Pacific, before he tries any other cases.

The MASTER: That does not answer my question.

Mr. HADLEY: I answer, yes. I think good faith of counsel would require that they prepare their statements as soon as possible.

Mr. HAGERMANN: My only question was, should you require this unnecessary work to be done?

Mr. HADLEY: The only understanding had in the case, according to my interpretation of it, was that the five roads would prepare their statements and file them. I have agreed that these three cases should be tried, in the order named. I did not make any other condition than that. But I do insist that we should have the statements of the other two roads, because I will not know whether we shall want to try any more than those three cases until we have seen the statements of the other two roads. It may be that after we have seen the statements of these other two roads, we will not want to have the experts examine even the accuracy of the statements.

The MASTER: I should not feel authorized t- make any
303 order in respect to delaying the statements to be prepared by the Santa Fe and the Alton roads.

Mr. JACKSON: Was there an order made at the previous hearing?

The MASTER: No order was made, but an effort was made at agreement, and I supposed an agreement had been reached.

Mr. JACKSON: We understood they would select three roads to be heard here, and then leave it to the Attorney General to determine whether the other cases should be proceeded with.

The MASTER: I protested against the length of time suggested, but on explanation it seemed reasonable, and any objection was with-

drawn. It was the suggestion of railroad counsel themselves that they would be ready for trial by the 11th of June.

Mr. HADLEY: The only remaining question is the matter of the order permitting us to examine the books of the roads agreed upon, and the determination of the length of time it would take for the examination of those accounts. The railroads have had practically sixty days; I will undertake to say we will be ready in thirty days, or less than thirty, in cases of the Wabash and the Burlington.

The MASTER: Would you have your statement ready by that time, Col. Clardy?

Mr. CLARDY: I think so.

Mr. HADLEY: I expect both roads to be ready at that time, and would expect to see the reports of the other three at that
304 time and then determine whether I want to put the experts at work on those roads.

I ask your honor to name a day convenient to yourself, and to the other counsel, but not more than thirty days hence.

Mr. HAGERMANN: Let us not have any misunderstanding about the time fixed for the preparation of these statements.

The MASTER: What do you think about setting only one of the cases for trial instead of two? The Wabash is entirely ready now, I understand.

Mr. HADLEY: I understand the Burlington is practically ready, and we can be ready in two as well as in one.

The MASTER: Suppose we should commence the hearing of these two cases, the Burlington and the Wabash, on the 10th of July, what would be a reasonable probability as to how long it would take to try those two cases, by having continuous sessions? First, could we proceed with the trial? Would you be ready to try, not only the tabulations, but the entire evidence? Would the Complainants be ready to proceed with all their evidence at that time, and if so what probable length of time would it require?

Mr. MINNIS: After the experts have gone through the figures it would not take long.

Mr. JACKSON: It would depend a good deal upon the conclusions of the experts employed by the state.

Mr. LADD: You will get through before we put our experts on.

Mr. CLARDY: It would take thirty days.

305 Mr. MINNIS: Oh, no, it would not take a great deal of time. Some of the issues in the two cases are the same, and the facts submitted in one would be submitted in the other. I don't think it would take more than two or three days to submit the Wabash case.

The MASTER: Let us have some understanding as to the Santa Fe and the Chicago & Alton. Counsel for the state are insisting that those two roads should go ahead at once and prepare their statements and have them ready at the earliest possible moment?

Mr. HADLEY: Yes, sir. As I have explained to counsel and the Master, why I think the original order in that matter should be carried out.

The MASTER: In the absence of an agreement, I would not be

authorized to make an order postponing the preparation of the case for trial. Presumably all of them would be ready for trial, and in the absence of an agreement I should expect them all to be ready for trial. If counsel could not agree, I should not feel authorized to make an order postponing the preparation for trial.

Mr. HADLEY: Mr. Scarritt has suggested, and I am willing to agree to that, that after our experts have examined the statements in the other two cases, than I may not feel it necessary to insist upon this.

The MASTER: It does not take thirty days long to come around. That will be only a month later in the year, anyhow. Why not let this matter in respect to the Chicago & Alton and Santa Fe roads remain just as it is now until that time, and then you can
306 very much more intelligently determine whether you will be in a position to insist upon statements being made, or not. You might save considerable cost, in case you conclude you do not need them.

Mr. HADLEY: I cannot decide that without seeing the statements, because what might not be remunerative for one road would be remunerative for the other. The Chicago & Alton road is not built particularly with reference to the towns in the State, now is the Santa Fe. The situation is strikingly dissimilar to that of the Burlington and the Wabash, which touch all the principal towns in the state. Mr. Scarritt has suggested, which is satisfactory to me, that as soon as I have examined the two statements, I shall then notify them whether I will insist upon those two roads proceeding. But it shall stand in abeyance until I notify them that they shall proceed, and then they will proceed with all possible expedition to prepare them.

The MASTER: As between the Chicago & Alton and the Santa Fe, is it agreed as to which of those two trials shall be called first?

Mr. HADLEY: It was ex-ected, and I believe now, we will not call those two roads for trial. Those are to remain in abeyance until I can determine whether to try one or both of them.

The MASTER: The trouble about that is, that unless the case is set down for hearing, a month from now we will be in the same condition as today.

Mr. SCARRITT: You have three cases before you to try I
307 am satisfied the Attorney General will not try those two cases. At any time he indicates that he will proceed in them. your Honor can set them fro trial.

Mr. HADLEY: They can be held in abeyance. I cannot determine whether I want to try them until I can see their statements.

Mr. LADD: When can we have the Burlington statement?

Mr. HAGERMANN: In four days.

Mr. HADLEY: When can we have the Wabash statements?

Mr. MINNIS: You can see it this evening, I think.

Mr. LADD: Is it necessary that we should apply to the Master for an order to permit us to examine the books and papers?

Mr. HAGERMANN: No, sir.

The MASTER: There should be entered a formal agreement that out of the eighteen cases five, or less than five, are to be tried.

Mr. HADLEY: Out of the eighteen roads, five or less than five, as may be subsequently agreed upon, shall be tried at present, and the five so selected are: The Chicago, Burlington & Quincy, the Wabash, the Missouri Pacific, the Atchison, Topeka & Santa Fe, and the Chicago and Alton.

The MASTER: The hearing will be continued until Monday, July 16th, 1906, at which time the cases of the Burlington, Wabash and Missouri Pacific will be called for hearing, in the order named.

308 CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Respondents.

ST. LOUIS, MO., *Sept.* 7, 1906.

Pursuant to notice heretofore given herein on the — day of ——, 1906, the above mentioned cause came on for hearing before the Special Master, at the Federal Building, in the City of St. Louis, Missouri, on the 7th day of September, 1906, whereupon the following proceedings were had:

The MASTER: Gentlemen, are you ready to proceed with the case of the Chicago, Burlington & Quincy Railroad Company vs. Herbert S. Hadley, et al?

Col. SPENCER: We came down here prepared to make a formal start in this case today. I have had some talk with General Hadley, and thought it would be necessary, to develop this side of the case, to consult the records of the Burlington, Company which are in Chicago. Of course, we have our Auditor here today, and will, at the proper time, introduce our statement, and introduce him. Without meaning that we are ready to proceed with the trial of the case, we are ready to make a formal start in the case, and we think both sides will ask your Honor to adjourn to Chicago to take further testimony.

309 The MASTER: Very well, proceed.

Col. SPENCER: We have had some conference since we got into this room this morning, and I would like to ask your Honor, in view of the fact that we will probably not occupy more than one hour or an hour and a half of your time, that you will let us offer our first witness at two o'clock this afternoon.

The MASTER: I presume there will be no objection to that.

Col. SPENCER: He is in the city, at the hotel now, and we will be here at two o'clock, prepared to offer him as a witness.

We are discussing some matters which we feel will facilitate the hearing later on.

General HADLEY: I have no objection to that, if your Honor pleases; and, in order that what has been a matter of discussion between us this morning may be made clear to you, I will say that it was suggested by counsel, and also by the experts who had ex-

amined the books, both the experts for the State and the experts for the Railroad Company, that when it came to the taking of testimony in the Burlington case, which is the first case for hearing, that the verification of the figures of the experts of the Railroad Company, and the experts for the State, would require a reference to the books; and as it was found, by actual examination, that these books were numerous, and very bulky, it would probably be a matter of convenience, also hasten the proceedings to adjourn to Chicago.

I suggested, in reply to that suggestion, that we had bet-
310 ter make a start today, and see by an examination of the witness himself, who has compiled the statement of the Railroad Company, if that was so; and if it was, then the matter of an adjournment to Chicago would be considered.

So, as I understand it, Judge Spencer is here with his witness, ready to proceed, and we can, by the examination, determine whether it would be a matter of convenience to all parties concerned, and hasten the hearing, to adjourn to Chicago. That is the status of the Burlington case. I believe I have stated it correctly?

Col. SPENCER: Yes.

General HADLEY: Them as to the other railroads——

The MASTER: Let us take up each case in its order. I wish to make a separate record in each case, so there will be no misunderstanding.

The hearing in the Burlington case will be adjourned until two o'clock this afternoon then to be resumed at this same place.

311 After recess the following proceedings were had:

CHARLES I. STURGIS, a witness of lawful age, being duly produced, sworn and examined, on behalf of the Complainant, testified as follows, to-wit:

Direct examination.

By Mr. HAGERMANN:

Q. What is your name?
A. Charles I. Sturgis.
Q. You reside where?
A. At Winnetka, Illinois.
Q. Your position with the Chicago, Burlington & Quincy Railroad Company is what?
A. General Auditor.
Q. How long have you held that position?
A. Practically since 1890. The actual title of the position I believe I got in 1894.
Q. And before that it had been what?
A. Assistant General Auditor, but I was in full charge.
Q. What experience have you had in railroad auditing?
A. I entered the auditing department in 1888, and have been connected with it ever since.
Q. In what position did you enter?

A. I entered as Assistant General Auditor.
Q. And with the same system of roads, the Burlington system?
A. With the Burlington system,—yes, sir.

312 Q. At a previous meeting before the Master, it was arranged that a general statement of earnings, local and interstate, should be made upon behalf of the Burlington Company, to submit to the State's Counsel, so as to have the State's expert examine the same: were you thr person who had charge of getting up such statement?
A. I was.
Q. And when, if you remember, was that statement delivered?
A. I have a record of the date June 15, 1906.
Q. Did the State then nominate its expert or experts to go over this account?
A. I was so given to understand.
Q. And who was the person who thus represented the State?
A. Mr. Fischer.
Q. What are his initials?
A. E. M. Fisher.
Q. He is a gentleman you know?
A. Yes, sir.
Q. And an expert in the auditing business?
A. Yes, sir, undoubtedly.
Q. Is he a Chicago man?
A. I believe his home is in Minneapolis.

Mr. HAGERMANN: I now hand to the stenographer a statement, which I ask to have marked as Complainants' Exhibit 1."
The paper is so marked.

313 Q. I ask you if this paper which has been marked "Complainants' Exhibit 1" is the original of the statement which you or your Company delivered to the state, pursuant to the arrangement which has been mentioned?
A. (After examining statement.) It appears to be, and three out of the four sheets I can positively indentify. There is no stamp, or any of my own figuring on this first page, but the other sheets I can indentify by my own figures and the stamp.

Mr. HAGERMANN: There is no dispute about its being the statement, is there?
Mr. HADLEY: The one we have is a copy.

Mr. HAGERMANN:

Q. Will you state, in a general way, how that statement was compiled, or how you got the information upon which the compilation was made?
A. The statement is comprised of four sheets, two of which set forth the effect, or rather, the decrease in earnings which would have taken place in the calendar years 1904 and 1905, if the rates (which I understand were ordered by the Legislature) had been applied to the business done. They show for the year 1904 a decrease of $173,770.44; and for the year 1905, $171,122.07?

Mr. HADLEY: I suggest that the witness confine himself to answering the question as to how they were prepared.

Mr. HAGERMANN: That is what he is going to do.

Mr. HADLEY: I understood the question to be how they were prepared.

A. These figures were determined by actually applying the new rates to the way-bills on which the shipments were actually carried.

314 Q. Those way-bills are kept where?

A. In Chicago.

Q. At the general offices of the Company?

A. Yes sir.

Q. And I presume they had to be compiled by clerks of some kind?

A. They had to be compiled by clerks in the office of the Auditor of freight accounts.

Q. And about how many clerks worked upon getting that information together for you?

A. Probably as many as twenty-five at least. I don't know how many. They have over two hundred clerks in that office.

Q. And about twenty-five of these clerks made up the figures from the books and papers in the office there?

A. They could easily have employed twenty-five or more; it would depend upon the work, and the time actually spent.

Q. These are clerks regularly employed in the Auditing Office of the Burlington Company?

A. Clerks regularly employed in the Auditing Office—yes.

Q. Under your direction?

A. Yes.

Q. These sheets of which you speak were gotten up in that way, under your direction and supervision?

A. They were.

The MASTER:

Q. Do these way-bills to which you refer have reference
315 to way-bills of freight transported only within the State of Missouri?

A. Entirely. They were only way-bills for freight transported entirely in the State of Missouri.

Mr. HAGERMAN:

Q. What you have been testifying to relates to the comparative statements as to the effect of the proposed rates—what would have been the effect upon the actual business done, upon those commodities, in 1904 and 1905?

A. Yes sir.

Q. The other two sheets represent what?

A. The larger of the two sheets, that containing the most information, starts off with the miles of road of the system, and the miles operated in Missouri, the figures being both taken from our records.

Q. Those are from your regular records in the office at Chicago?

A. Yes sir.

Q. Go ahead, then, with the rest of it.

A. The same may be said about the other figures.

Q. Take the first item there, "Earnings from Freight, Local," in one column, and "Earnings from Freight, Interstate," in another column: how was that compiled? By whom, and from what books and papers?

A. Those figures are compiled practically by the same clerks, and originally from the way-bills. All the figures on this sheet (indicating) were compiled prior to the request for this information, except the figures for the local business. That we do not keep ordinarily, and it was made up from the way-bills, purposely for
316 this particular case, in exactly the same way that the other two sheets referred to were made from the way-bills, to determine the effect of the rates.

Q. That is to say, if I understand you, the receipts here from freight, passengers, etc., in the interstate business, had been compiled from time to time in the ordinary course of business, by the various clerks in that department?

A. The "total" column had been so compiled, and the "local" was made up especially for this case.

Q. About how many clerks were used in that work, and under whose supervision?

A. It would be difficult to say how many clerks, but a larger number than were employed to pick out the previously referred to figures, because in this case they had to take all the local freight bills, and not confine it to the eight or ten commodities referred to in the bill.

Q. How about the passenger receipts—your answer relating seemingly to the freight receipts?

A. The same thing would apply, except that, of course, there are no way-bills in that case. That would have to be taken from the record of the tickets sold, and the reports of the agents.

Q. And how about mail, express, etc.?

A. The mail and express, and other miscellaneous earnings, which are included in the "etc.," are apportioned upon the local, arbitrarily; that is, we have as a rule no specific basis that can be used to cover them all—no uniform basis, and you have to apply it in each case. For instance, the earnings on milk are included in
317 there: in that case the earnings set aside for local were gotten at on the same basis we got for the freight that was local.

Q. It was actually local business?

A. Yes sir, actually local business.

Q. How about mail, for instance: how did you ascertain what was local?

A. We determined the mail first for the State of Missouri, on the basis of the routes as determined by the government; and where the routes crossed the state line, the earnings were divided on a straight mileage proportion.

Q. Is there any precedent for doing it in that way? Is that the ordinary way?

A. I cannot say there is any precedent. I have not previously figured it that way, but that seems to be the only available method.

Q. Why is that so?

A. The Government pays by routes. It determines the earnings of a route by the periodical weighings, which occur once in four years. So the earnings are strictly on a particular route.

Q. Now, "express": How did you deal with that, and ascertain what is local and what is interstate.

A. The express earnings were based upon the freight earnings, and apportioned in the same way. The express company does not make us any detailed report showing just where the express earnings accrue.

Mr. HADLEY:

Q. You mean the same percentage?

A. Yes sir.

318 Mr. HAGERMANN:

Q. Did that seem to be the only feasible or practical way by which you could arrive at the express earnings?

A. I think that is somewhat a mooted question, as to the best basis. It always seemed to me it was the best one you could get; but there is no direct relationship there. It is only on the general idea that express and freight business will be about similar.

Q. And you cannot get, in the way the express companies return their accounts, any information by which you could do it in some other way?

A. It would be absolutely impossible; we haven't the slightest thing to show.

Q. You have "etc." there, and you spoke of milk, and you spoke in a general way of several items. Please give, in a general way, what is covered?

A. Mail earnings, express, telegraph, switching, rents, excess baggage and storage, milk, car service, and sundry earnings, which includes certain per cents we add to bills against outside parties; some bridge tolls, and perhaps one or two other small items.

Q. Those sheets were made up from the original reports and papers in your office?

A. They are all made up from the original papers.

Q. By this same lot of clerks of which you have spoken?

A. No sir, they come in under a different set of clerks, in another office, but under my supervision.

Q. How many of them?

319 A. About a hundred and fifty in that office. I cannot tell you just how many were employed on that work. Every day, probably, it would vary, depending on how they could be taken from other work.

Q. And the nature of the information you desired?

A. Yes sir.

Q. Under the head of "expense," there is an item here, "Conducting transportation": how is that made up?

A. It is a natural subdivision of the total operating expense. They are all made up in the same general way, and, speaking

generally, of course there are a great many details of compilation—but, speaking generally, operating expenses are drawn from three sources: the pay-rolls, the vouchers, and the material distribution. That is, the pay-rolls of course represent the labor that is done. The material distribution represents the material that is used on the work, that goes out from the store-house. Vouchers cover a large variety of things which are charged up. For instance, if work is done by contract, it will be paid by voucher. There are a thousand and one vouchers. I suppose there are three thousand papers a month to be transferred to operating expense, some covering one account and some another.

Q. Do I understand that in getting the sum total for that item these original papers had to be examined?

A. They all had to be examined, all had to be checked, and all had to be distributed. One of the chief sub-divisions is "conducting transportation"—the one you asked about.

320 Q. How about "Maintenance of Equipment"?

A. That is 1904, and comes under the same idea.

Q. How about "Taxes"?

A. Taxes are paid by voucher, and are the actual taxes paid in the state.

Q. And would require examination of the particular vouchers in your office?

A. Yes sir.

Q. "Proportion of rental": what does that represent?

A. Proportion of rental represents the proportion of rental which is paid by the railway company to the railroad company.

Q. For the leased lines?

A. Yes sir, for the lease of the railroad property.

Q. All these items are made up from the books, papers and documents which are in your office there at Chicago, Illinois, and compiled by the various clerks under your supervision?

A. Yes sir.

Q. And you have actually supervised the making up of this statement?

A. Yes sir, that is my answer.

Q. What do you say as to its being correct, as to the best of your knowledge and belief?

A. I am satisfied that it is correct, to the best of my knowledge and belief.

Q. After this statement was exhibited to the State, and the
321 State's expert, Mr. Fisher, was appointed, what did he do in the way of checking up, and what facilities were afforded him?

A. I did not follow Mr. Fisher's work all the way through. He had from three to five men, I should say, at different times, working pretty steadily there.

Q. That is, in your office, and with the books and papers of your company, in Chicago?

A. Yes sir.

Q. For the purpose of checking up this particular statement?

A. So I understood. He was afforded every facility, and permitted to go everywhere. He is a man who does not have to put his nose down to a particular thing, because he has had experience in railroad work, and simply goes and gets what he wants. I told the head of each department to give him what he wanted, and he went and got it.

Q. How long was he engaged in that work?

A. He began right after June 15th, and was there yesterday.

Q. And is still there?

A. Yes sir.

Q. If, during the course of your examination as to these various items, any question arises by which it is necessary to examine the book or document, or some particular clerk, as I understand you, it or he would be found in the Chicago office; and it would be impracticable, wouldn't it, Mr. Sturgis, to undertake to conduct an examination in the dark, down here, without knowing what
322 particular book or what particular clerk we might need from time to time for any particular information?

A. Yes sir, it would be out of the question to go into detail, down here, if that is required. If anybody required detail—Of course such detail as I have here I would be glad to explain, but for any original record they would have to go to Chicago.

Q. Or, if any question arises as to any compilation by any particular clerk?

Mr. HADLEY: As to accuracy.

A. It could be decided by going to the particular records. There is any amount of figuring in working up anything of this kind, and figuring up on these calculating machines. Now whether they have preserved the slips up there I don't know. Ten per cent of the clerks are changed every month, so the probability of getting hold of the particular clerk would be very remote.

Q. Assuming somebody would want to inquire into the accuracy of some paper, or something representing a particular transaction, it would be impossible—to predict in advance what it would be, there being thousands of items—but if a question was raised it would be necessary to refer to the books and the documents at the general office?

A. There is no doubt of it.

Q. Has Mr. Fisher made any report to you yet?

A. No sir, I did not understand he was to make any.

Q. Has he made any objections to you, as to the accuracy of your statement in any way?

A. He told me he had found errors in this item of expense
323 of 1905——

Mr. HADLEY: I don't know the purpose of the question, but I would object to any statement by Mr. Fisher as not being binding upon any party to this case.

Mr. HAGERMAN: What I am trying to get at is, if there was any difference between the experts. I suppose ultimately we will get down to the question of whether there is any difference.

Mr. HADLEY: I did not understand your purpose.

A. He merely mentioned to me, casually, that he found in the expense, that the expenses should be higher than I had them. It is but a small amount. I have forgotten the figures, but about $5,000 for the local and interstate business.

Mr. HAGERMAN:

Q. That is in the general expenses of 1905?

A. It comes under those first four heads.

Q. You said something about making some correction of this statement, from what it was as originally produced?

A. The statement in its present form, in the form in which it was turned in on June 15th, 1906, was made up by me, and the clerks in our local office, in a hurry. There were some small corrections found afterwards, which I should like to have the other copy corrected to correspond with.

Q. What are the figures you want to correct?

A. I am sorry to say they make a worse showing for us than the original figures. The final figure comes in on the top sheet, where it shows a net of $3,106.36.

Q. That is to say, under the item of "Expense of local freight business in Missouri, computed upon the same basis as the
324 total expense for 1905"?

A. Yes.

Q. On the statement, as submitted to the State in June, 1906, it was $3,601.36?

A. Yes, and it is now $14,204.68.

Q. And under what item did that come to make that difference?

A. That comes in on the rentals. It was due to an erroneous figuring in the rentals.

For the year 1904 there is a very small correction. The original figures were $63,339.39; they should be $63,356.69.

Q. A difference of how much?

A. $17.30.

Q. Under what item is that?

A. That is also under rentals.

Q. With these exceptions, the statement handed in in June is correct?

A. I believe it is.

Mr. HAGERMAN: We offer in evidence the papers identified by the witness, as Complainants' Exhibit 1.

Which papers are in the words and figures following, to-wit:

325 Chicago, Burlington & Quincy Railway Company.

	1904.	1905.
Total number of Miles operated (June 30th)	8,326.16	8,561.64
Miles operated in Missouri "	1,031.89	1,141.79

Statement of Earnings and Expenses in Missouri for the Years 1904 *and* 1905.

Earnings.

1904.

	Local.	Interstate.	Total.
From Freight	$1,525,158.92	$6,199,300.13	$7,724,459.05
From Passenger	1,652,464.42	2,267,707.98	3,920,172.40
From Mail, Express, etc.	541,660.06	705,347.27	1,247,007.33
Gross Earnings.	$3,719,283.40	$9,172,355.38	$12,891,638.78

1905.

From Freight	$1,649,665.73	$6,735,454.71	$8,385,120.44
From Passenger	1,368,745.95	1,661,576.24	3,030,322.19
From Mail, Express, etc.	553,582.75	615,582.26	1,169,165.01
Gross Earnings.	$3,571,994.43	$9,012,613.21	$12,584,607.64

Expenses.

	1904.	1905.
Conducting Transportation	$3,852,409.27	$3,862,015.99
Maintenance of Equipment	1,337,733.79	1,653,440.56
Maintenance of Road & Structures.	1,635,794.48	1,750,867.36
General Expenses	703,231.94	812,483.64
Taxes	188,751.46	198,415.86
Proportion of Rental	3,169,369.73	2,974,501.50
Total Expenses	$10,887,290.67	$11,251,724.91

Recapitulation.

Gross Earnings	$12,891,638.78	$12,584,607.64
Gross Expenses	10,887,290.67	11,251,724.91
Net Earnings	$2,004,348.11	$1,332,882.73

"Complainant's Exhibit 1" (Page 1).

326 Chicago, Burlington & Quincy Railway Co.

Earnings as Reduced Had Traffic of the Character Mentioned in the Act of 1905 *Been Carried at the Prices Therein Named.*

	1904.	1905.
Total revenue received on local business of the classes mentioned in the Act of 1905	$539,270.02	$526,532.72
Total which would have been received therefor had — been charged the rates authorized by the Act of 1905	365,499.65	355,410.65
Making a total diminution in revenue	173,770.44	171,122.07
Reduction in percantage of the local business	32.22%	32.49%
The total receipts from all local freight business in Missouri were less diminution in revenue as above	1,351,388.48	1,478,543.66
The expense of local freight business in Missouri computed upon the same basis as the total expenses, were	1,288,049.09	1,474,942.30
Net	$63,339.39	$3,601.36
On the basis of percentages	.....	.....
Cost of earning each $100	.....	.....
Extra cost of doing local business as estimated by experts	.....	.....
Total cost of earning $100 in local traffic	.....	.....
Local earnings of each $100 as reduced by the Law of 1905	.....	.....

"Complainant's Exhibit 1" (Page 2).

327 Chicago, Burlington & Quincy Railway Company.

Statement of C., B. & Q. Earnings in the State of Missouri

And the Effect of the Proposed Rates as Specified in the House Bills Nos. 208 and 35 on State Freight Traffic.

Year 1904.

Commodities.	State. C., B. & Q. Earnings.			
	At present rates.	At proposed rates.	Decrease.	% Decrease.
Grain	68,703.51	55,264.60	13,438.91	19.56
Lime & Flour	25,022.53	19,057.99	5,964.54	23.83
Salt, Cement, etc	21,029.53	19,209.44	1,820.09	8.65
Lumber, Lath & Shingles	15,601.81	13,120.88	2,480.93	15.90
Ag'l Imps., Wagons, Furniture	3,569.12	2,495.55	1,073.57	30.07
Live Stock	399,799.63	252,050.89	147,748.74	36.55
Stone, etc	5,543.96	4,300.30	1,243.66	22.43
Total	539,270.09	365,499.65	173,770.44	32.22
Missouri Earnings Local to State	1,525,158.92			
Missouri Earnings on Interstate Business	6,199,300.13			
Total	7,724,459.05			

"Complainant's Exhibit 1"—(Page 3).

328 Chicago, Burlington & Quincy Railway Company.

Statement of C., B. & Q. Earnings in the State of Missouri

And the Effect of the Proposed Rates as Specified in the House Bills Nos. 208 and 35 on State Freight Traffic.

Year 1904.

Commodities.	State. C., B. & Q. Earnings.			
	At present rates.	At proposed rates.	Decrease.	% Decrease.
Grain	73,609.43	57,825.34	15,784.09	21.44
Lime	7,356.67	5,767.21	1,589.46	21.60
Flour	7,022.73	5,411.35	1,611.38	22.94
Salt, Cement, etc.	32,561.24	27,329.55	5,031.69	15.54
Lumber, Lath, Shingles	11,592.62	9,350.98	3,241.64	19.33
Agricultural Implements	1,899.36	1,365.07	534.29	28.13
Wagons	1,896.61	1,166.54	730.07	38.49
Furniture	4,720.44	2,963.22	1,757.22	37.22
Live Stock	373,372.55	233,069.91	140,302.64	37.57
Stone, etc.	12,701.07	11,161.48	1,539.59	12.12
Total	526,532.72	355,410.65	171,122.07	32.49
Total Local Traffic	1,649,665.73			
All Interstate Traffic in Missouri	6,735,454.71			
Local and Interstate	8,385,120.44			

"Complainant's Exhibit 1"—(Page 4).

329 Mr. HADLEY: Of course there is no objection to the exhibit, insofar as the witness states it is correct; but I think its formal admission in evidence should be held in abeyance until after the cross-examination. There might be other corrections needed to be made. We have a right to examine this witness as to the accuracy of the statement.

Mr. HAGERMAN: I imagine that is true, but we should have some mark or guide from which to make deductions.

The MASTER: Certainly, for that purpose it is proper to introduce it now.

Mr. HAGERMAN: I think that is all now, in a general way, your Honor.

The MASTER: Do you mean by that, you are through with the examination of this witness in chief?

A. I think probably that after we adjourn we will want to go into more detail than now. But it is perfectly apparent to our minds, if not to your Honor's, that with the situation as it is, and the number of books and papers, that while we might get through without reference to these papers, we also might get to a point where we would have to adjourn and go to Chicago, or send to Chicago for the books and papers.

The MASTER: The question is, whether upon our next meeting this witness will be turned over to the attorneys for the State for cross-examination.

Mr. HAGERMAN: I think probably we will want to ask him a few more questions.

The MASTER: Have you any other witnesses to be examined now?

330 Mr. HAGERMAN: No sir.

The MASTER: Gentlemen, what do you say as to adjournment, time and place?

Mr. HADLEY: I am inclined to agree with Mr. Hagerman, that it would result in a quicker termination of the testimony, to go to Chicago. I am informed by my expert that to sustain his contention as to the inaccuracy of the statement, it will be necessary to go to the original records. In order to make the cross-examination effective, or in fact helpful, it will be necessary to have the books to refer to. As to time and place, I haven't anything to do but to attend cases of this kind, and I am ready at almost any time.

Thereupon the further hearing in this case is now adjourned, to be resumed on Monday, September 17th, 1906, at the General Offices of the Chicago, Burlington & Quincy Railroad Company, 209 Adams Street, in the City of Chicago, Illinois, at which time and place Counsel will attend without further notice.

331 CHICAGO, ILL., *Sept.* 17, 1906.

Met, pursuant to adjournment, on Monday, Sept. 17, 1906, at No. 209 Adam- St., Chicago, Ill., when, by consent, the further hearing of testimony herein was adjourned until to-morrow, Tuesday Sept. 18, 1906, at 10:00 o'clock A. M.

Met, pursuant to adjournment as above, Tuesday, Sept. 18, 1906, at 10.00 o'clock A. M. when, by consent of all parties, the taking of testimony herein was continued until 2:00 o'clock of the same day.

TUESDAY, *Sept.* 18, 1906—2:00 p. m.

Parties, met, pursuant to above continuance, for the further hearing of testimony herein; whereupon the following proceedings were had:

The direct examination of Mr. CHARLES I. STURGIS, by Judge O. M. Spencer, was continued as follows:

Judge SPENCER:

Q. Referring again to the statement you filed as an exhibit at St. Louis in your testimony there recently on page 1 of Exhibit 1, what are the gross earnings named there, what is the amount stated?

A. The gross earnings for the state of Missouri from both local and inter-state business for the year 1904 is $12,891,638.78.

332 Q. How did you arrive at the gross earnings?

A. I arrived at them from the original records.

Q. I understood you made them up from the original records; but how did you get this amount as earnings on the property in Missouri?

A. This is the earnings on the total, local and interstate together, that total figure, and that is made from the original records; that is in actual figures, as nearly as we could figure it. The way we arrived at the Missouri proportion, where it was inter-state business, varied with different classes of business. In case of freight, it was divided on mileage; in case of tickets it was divided on mileage; there were certain miscellaneous earnings that had to be divided on one basis or another. I think I explained that at the previous hearing.

Q. You spoke of dividing it upon a mileage basis: You may explain how that is as to inter-state business.

A. Take a shipment, for instance, that would come from Chicago to Kansas City. We would have the division of mileage to the Mississippi River, and find out what per cent Missouri's mileage was, and apply that to the total earnings on that shipment.

Q. What are the gross local earnings in Missouri?

A. The gross local earnings for the year 1904, were $3,719,283.40.

333 Q. How did you ascertain that amount to be the gross local earnings?

A. We ascertained it in the case of freight directly from the way-bills that covered shipments entirely within the State of Missouri; in the case of tickets, from the tickets covering passengers that traveled entirely in the State of Missouri.

Q. What was the total expense of all business in Missouri?

A. For that same year?

Q. Yes, 1904?

A. For that same year, $10,887,290.67.

Q. After deducting the total expense from the total earnings, what were the net earnings for Missouri?

A. The net earnings for the year 1904, $2,004,348.11. I would like to explain there in regard to the expenses for the year 1904, that when we had made up our figure, of course it is made up from a very large number of detail figures; it was made up in the first place rather hastily, and I understand that the expert found that our figures were about five thousand dollars too low, $5007, or something of that kind.

Mr. HAGERMAN:

Q. You mean by "expert" the expert for the State of Missouri?

A. Yes sir.

Q. Give us his name?

A. Mr. Fisher. Afterwards his representative and mine went over and checked the figures together, and I found the correct figure was about fifteen thousand dollars greater than the figure here shown (indicating Exhibit 1). As that would cut comparatively a small figure in the final result, although favorable to the railroad company, we have not changed those figures, as they had already been presented to the court.

334 Judge SPENCER:

Q. What per cent or proportion of the total earnings are the local earnings in Missouri?

A. Approximately thirty per cent, or a little less. That is, the local earnings are $3,719,283.40, and the total earnings are $12,-891,638.78.

Mr. HADLEY: I have been endeavoring to get some agreement of counsel about the terms that we should use in applying to the same thing, in order that there may be no misunderstanding between counsel, the witness and myself. That which is known as intra-state or state business, is designated in the statements of the Burlington from which Mr. Sturgis is now testifying, as "local" business; and yet what is known as local freight is an entirely different thing from the standpoint of railroad terminology, as I am informed, than inter-state freight would be.

Mr. HAGERMAN: The expert has used certain terms in his statement.

Mr. HADLEY: I simply want to avoid confusion by seeing that we understand the same thing.

The MASTER: I understand the term "local," as used in this paper by the witness, to mean local in the State.

Judge SPENCER:

Q. Is that right, Mr. Sturgis, that the term "Local" means intra-state?

A. Yes.

Q. What per cent of the total earnings is the total expenses of the business, Mr. Sturgis?

A. You refer to all Missouri business?
Q. Yes?
A. For the year 1904, 84 and a fraction; for the year 1905, 88 and a fraction per cent.
335 Q. How did you arrive at the expense of doing local business, if you have made any calculation on that?
A. In arriving at the expense of doing the local business, we take the same per cent that the expenses are to the earnings on the whole Missouri business. In other words, 84 and a fraction per cent for 1904, and 88 and a fraction per cent for 1905.
Q. You mean, of the business of those years?
A. Yes sir.
Q. Of the gross Missouri earnings?
A. Yes sir.
Q. That is the basis upon which you computed the earnings in Missouri, and the expenses in Missouri, as shown by the statement you have furnished for file?
A. As on this statement, is expense figured for the total local business shown? The only figure of expense shown in regard to the local or intra-state business is on the freight business.
Q. In arriving at the expense on the local freight business, you use the same per cent that you did on the gross earnings?
A. Yes sir.
Q. And you also assume that the cost of doing the business, for the purposes of that statement, was the same in each case?
A. Yes sir.
Q. I will ask you, as a matter of fact, whether that is true or not; whether the cost of doing local business is the same,
336 or whether it is greater than doing through business?
A. That is a matter of judgment, because there is no possible way of determining actual cost of doing intra-state business as distinguished from all business in the State. In my judgment this basis was used here, because used in previous cases. But, so far as I have gleaned, and can judge from experience, not only from general experience on this road, but also from experience in figures I have seen on other roads, the cost of doing the local or intra-state business would vary anywhere from three to seven times as much proportionately to the earnings, as doing all business in the State.
Q. Are you familiar with the elements that go to make up that extra cost of doing local business?
A. I am with some of them.
(Previous answer of the witness is read.)
The WITNESS: I wish to correct that answer by cutting out "experience on other roads." I wish to omit the implication that I have had experience in this on other roads than the Burlington.
Q. Taking into consideration, Mr. Sturgis, the local freight shipped from terminal points to points in Missouri, the amount carried, the time consumed on the journey, the local freight picked up and distributed, salaries of the station agents, engineers, and all employés, what would you say was the difference between the cost

of doing the local traffic in Missouri and the cost of doing all
337 other business, through business?

A. It seems to me you are setting aside a certain part of the expenses there.

Q. Including those and all other expenses that you know of, what, in your judgment, would be the relative cost of local business as compared with through business?

A. From three to seven times.

The MASTER:

Q. You are using the word "business": Do you mean to confine that, Judge Spencer, in your interrogatory, and do you, Mr. Sturgis, mean to confine in your answer the word "business" to freight business, or do you also include passenger business?

The WITNESS: I am talking particularly about freight business.

Judge SPENCER: I was asking about freight business.

Q. Have you made a computation upon the basis of the cost of doing local business, assuming the cost of local business to be three times the cost of all freight business: Have you made a computation showing the cost of doing the local business in Missouri?

A. Yes sir.

Q. State what figures you used in making that computation, and what was the result?

A. For the year 1904 we found that the earnings on local or intra-state freight were 11 and a fraction per cent of the total earnings on all State business. And in order to determine, therefore, the share of the expenses which are apportionable to local freight traffic, provided the cost is three times as great, it is necessary to multiply this 11 and a fraction per cent by three. We then have a figure which, of course, we cannot add to the 88 and a fraction per
cent of expenses, which represented the expenses of the inter-
338 state business, because, by so doing, we would have more than the total expenses; therefore, the regular, mathematical rule, as I understand it, is to take the proportion of the two figures that we then have, and apply them to the total expenses.

Stating that in that way, it will probably not be followed, because it was rather difficult to figure it out myself, when I had paper and pencil before me and time to think over it. But if I may take some simple per cents, I can illustrate what I mean:

Suppose, for example, that the local business is 20 per cent of all business; that gives us 20 per cent and 80 per cent.

The MASTER:

Q. 20 per cent local?

A. Yes sir, and 80 per cent on the inter-state.

You multiply the 20 per cent by three, which gives you 60 per cent. Now, you have 60 per cent and 80 per cent, which of course is in excess of 100 per cent, but they bear the proper relation to each other, and, therefore, to work out the problem, you add the 6 and the 8, and get 14. The inter-state business, therefore, has for its share of the expense 8/14 of the total expense; and the local business

has 6/14 of the total expenses for its share. That, I am satisfied, is mathematically correct as a principle.

Q. Or, reduced down, it would be 3/7 and 4/7?

A. Yes sir. Now, working it out on that basis, which I believe cannot be questioned, it is a purely mathematical rule which, although I haven't seen it used since I left college, I am
339 satisfied is correct. Working on that basis, we found for the year 1904, of the ten million eight hundred and eighty-seven thousand odd dollars of expenses on all Missouri Business, seven million, seven hundred and sixty-two odd thousand dollars, represents the expense on the inter-state business, and three million, one hundred and twenty-four odd thousand dollars, represent the expenses on the local or intra-state business. If, then, we take this figure which is exactly $3,124,652.42 as the expenses, it gives us as a result, instead of the net shown on sheet 2 of $63,365.69 a deficit of $1,773,263.94.

Mr. HAGERMAN:

Q. It makes the change on sheet two of "Exhibit 1"?

A. Yes sir.

Mr. HADLEY:

Q. I didn't understand the witness to state (I didn't hear, on account of the confusion), what sum he subtracted the figures 3,124,-652.42 from, in order to get the $1,773,263.94 deficit?

A. I did not state the steps in that computation. However, I can tell you in just a few words. That represents the total cost of this intra-state business freight. We have, right on that sheet 2 of Exhibit 1 $1,288,031.79.

Judge SPENCER:

Q. That is the expense of local business, computed on a single cost basis?

A. Yes sir. Now, I found the difference between the figure on a single cost basis and the figure on the three cost basis, and that difference is $1,836,620.63. From that, I deducted the $63,356.69 shown as net earnings, the result being the $1,773,263.94, given above as a deficit.

340 Q. Mr. Sturgis, in making that computation by which you arrive at the fact that the local business is 11 and a fraction per cent, you included in the total operating expenses, taxes and rental?

A. Yes sir.

Q. That is, the $10,887,290.67 which is given on page 1 of Exhibit 1, as "gross expenses", you included in that the item of taxes and rental?

A. In the first part of your remark you have confused the figures somewhat. The 11 and a fraction I referred to was the per cent of earnings on intra-state business, of earnings on all business. The figures you are referring to, as I understand, are operating expenses and per cent of the total. In other words, on sheet one the $10,887,-290.67 shows as the expense of 1904, it includes taxes and rentals.

Q. Then you have taken three times the same proportion of those items in your calculation, haven't you?

A. Yes sir.

Q. Now, have you made a calculation, after eliminating those two items, so as to base your sum on the total expenses, not including taxes or rental?

A. Yes sir, I have made such a computation, but I believe the taxes and rental should be included.

Judge SPENCER: I do, too, but I want to put it in both ways, because I don't know how the court may feel about it, and I want to show it in both aspects.

Q. What is the cost of local business on that basis?

A. The cost of local business on that basis is $2,160,871.64,
341 and that will make the net deficit for 1904 on intra-state business in Missouri $809,483.16, instead of the net earnings as shown of $63,356.69.

The MASTER:

Q. The figures being testified to by the witness now are nowhere shown on Exhibit 1, as I understand it?

A. No sir.

Q. They involve other computations?

Judge SPENCER: Yes sir, for which we will file other exhbits.

Q. In making this computation, you have assumed the new rates to be in effect. In other words, you have taken the rates proposed under the new law?

A. Yes sir.

Mr. PARKER:

Q. In other words, assuming the new law to be in effect, and assuming that to perform the service necessary to State business exceeds in proportion the cost of total business, as three to one, the operations of the Burlington on State business for 1904 will show a deficit of over $800,000?

A. Under the last computation, yes sir.

Q. And that, counting nothing for the use of the property or taxes?

A. You are correct.

Judge SPENCER:

Q. And that deficit would be increased by charging the local freight in Missouri with its proper proportion of the taxes and the rent, whether it be 11 per cent, or three times 11?

A. Yes sir.

Q. You have not made any computation showing what the deficit would be by charging 11 per cent of the rental and taxes, have you?

A. I have no completed computation. That is what I
342 was working on just now.

Q. I know, but the court does not want you to take up

the time to figure that way. We will ask you for that, and you may figure on it later.

The MASTER:

Q. What is this 11 per cent to which you have been referring?
A. It is the per cent representing the proportion of earnings on intra-state freight to the earnings of all Missouri business, both inter- and intra-state.
Q. You mean by that, freight business?
A. The entire business.
Q. The entire business, including both passenger and freight?
A. Yes.
Q. Why do you involve in your computations here the element of expense and of revenue derived from passenger business?
A. In the way the expenses on local business are ascertained, it makes no difference whether you take that direct step from expense on all Missouri business to expense on local freight, or take the intermediate step, going from expense of all local business to expense of all Missouri freight business, and from there to the expenses of the Missouri local intra-state freight.
Q. In this computation you have just made, you have only treated of freight, have yu?
A. That is all.
Q. There are no passenger earnings or expense in the computation you have just made?
A. Yes.
The MASTER: That is what I supposed. I understand the witness to say this per cent of 11, or ratio of 11, has reference to all business, both passenger and freight.

Mr. LADD: He said 11 per cent was the ratio between local
343 freight earnings and the entire earnings in the State.

The WITNESS: Your Honor, the earnings on all Missouri freight is approximately 60 per cent of the earnings on all Missouri business, and the earnings on Missouri local or intra-state freight are 19 per cent of the earnings on all Missouri freight. That results in that 11 per cent of the total earnings.
Q. Freight earnings?
A. No, total earnings.
General HADLEY: In other words, that 11 per cent represents the ratio of the earnings on local business to the earnings on all Missouri business.
The WITNESS: I merely left out the intermediate step.
Q. You mean, according to your statement, it is 11 per cent?
A. Yes sir.

Judge SPENCER:

Q. The only difference in the figures you are now giving and those you furnished the Attorney General, is that in this computation you assume the cost of local business to be three times as great as the cost of doing all business?
A. Yes sir.

(At this point colloquy ensued concerning the statements that might be furnished by experts, when the following statement was made.)

The MASTER: If experts are brought in here on the part of the State, abundant opportunity will be given to the defendants to examine those statements and prepare themselves to meet it.

Mr. HAGERMAN: If any expert brings in a statement and they want to hold it back, we are going to appeal to the Master for
344 time to look into it.

The MASTER: No appeal will be necessary. Time will be given you as a matter of course.

Mr. LADD: We have not any such statement as this (indicating Exhibit 1).

Mr. HAGERMAN:

Q. Exhibit 1 was the statement that was submitted to the State's expert, and in a minor matter to which you referred, there was a certain correction of a few thousand dollars made by your testimony?

A. Yes, sir.

Mr. HAGERMAN: Now, I suggest that the stenographer endorse with red ink that correction by the testimony on the copies of this exhibit, so that we may have it before us as originally presented, and as corrected.

The MASTER: Very well, that may be done, so as to identify the paper as corrected.

Cross-examination.

By Mr. S. B. LADD:

Q. On page 1, of Exhibit 1, for 1904, the local freight earnings are stated to be $1,525,158.92. I understand this to be actual earnings; is that right?

A. That is correct.

Q. You reached that by taking your way-bills, or whatever papers you have in your office?

A. We went direct to the way-bills?

Q. That is the actual amount of money you received for the transportation of freight from points in the State, to other points in the State during the year 1904?

A. Those are actual earnings, not necessarily the money.
345 Q. Is there any significance in that statement?

A. No particular significance, except everything is on the basis of earnings, but not necessarily cash. I want to be exact.

Q. Now, I would like to ask you whether on all the commodities mentioned in the Act of 1905, which you transported within the limits of the State in 1904, you charged up the maximum rates for those commodities fixed by the Act of 1905; or did you carry some freight mentioned in the Act of 1905 at less than the maximum rates fixed in that Act?

A. I do not think I understand you, either by the reference to the

Act with which I am familiar by date, or by your expression "charge up". May I ask if by the Act you refer to the Act reducing the rates on certain commodities?

Q. Yes.

Mr. LADD: His statement is based on the amount they would have lost if the Act were followed.

Mr. HAGERMAN: I thought you referred to actual earnings.

Mr. LADD:

Q. The actual earnings were $1,525,000.00.

A. Yes, sir.

Q. Now, if you had charged your shippers for many of the commodities named in the Act of 1905,—I suppose you know what I mean by that, don't you?

A. Now I do.

Q. —the maximum rates fixed in that Act, would not the earnings in 1904 have been a larger amount than that? In other words, didn't you, in 1904, charge for some of the commodities mentioned in the Act of 1905, lower rates than the maximum fixed by that Act?

346 A. In the aggregate, no. I understand decidedly not. I did not mean in the aggregate.

Q. Did you charge lower, then, for any of the commodities mentioned in that Act, than you might have done?

A. I understand your question was, whether the figure of our earnings from local freight would have been higher if we had charged the maximum in that Act?

Q. Not at all.

A. In reply to that, I would say no sir.

Q. I understand that would be your answer. I asked you if you had charged up on many of the commodities mentioned in that Act the maximum rates mentioned in that Act, whether your local earnings would not have been greater than you have stated?

A. No sir, I think you misunderstood that question.

Judge SPENCER: The maximum rate or the rates fixed by the warehouse commissioners?

Mr. LADD: I say the maximum rates fixed by this Act.

Judge SPENCER: Some may be lower by reason of the Act of the railroad commissioners.

Mr. LADD: The reason I asked that question, is because on the second sheet of that exhibit, he makes out what their revenue would be if the Act of 1905 had been in force in 1904. That is in his own statement.

Q. I asked you this question: Suppose the Act of 1905 had been in force in 1904, and you had charged the rates on all commodities allowed by the Act of 1905, would your deficiency in revenue have been $173,770.44, as shown on page 2 of your Exhibit 1?

347 A. If I may correct you so as to make my answer clearly understood, you do not mean a deficiency in revenue, but you refer to the figure of diminution.

Q. If I said deficiency, I did not mean it. Your expression is diminution.

A. I have not figured to find out what difference it would make, but it is a fact,—and this may anticipate your question—that where the law of 1905 to which you refer provided a higher rate than that in effect between some points, on some commodities, that increase was not allowed for in figuring this diminution of $173,770.44.

Q. Had that been allowed for, the diminution in revenue would have been less than your statement here, wouldn't it?

A. Yes, sir.

Q. How much less?

A. I do not know. I merely said we made no figures on that point.

Q. Can you ascertain what it would be?

A. No sir, not without going over all the figures.

Q. You have working sheets, haven't you?

A. Yes, sir.

Q. Which were made up by you and your assistants in order to prepare this Exhibit 1?

A. Yes. If I may state further, I understand that from these work sheets which were put in the hands of your expert, he made up certain calculations which we have no reason to deny are probably correct. But we ourselves have not made up that figure.

Q. Then you are not able to state now how much smaller sum the diminution in revenue would have been if you had charged in 1904 upon all the commodities fixed by the Act of 1905 the rate fixed by that Act?

348 A. No sir, I am not now in a position to state it.

Q. I understand from our expert—at least he so tells me, but whether he is correct or not I do not know of course—that your work sheets which you and your assistants used in the preparation of these statements, and which have been open to him, or at least I understand he has seen them, that it can be figured out from them that if you had charged on all the articles the rates fixed by the Act of 1905 during the year 1904, the diminution in revenue would have been $71,977.44 less than the amount stated on page 2 of this Exhibit 1; now, do you know anything about that?

A. No sir, I do not know whether the figure is correct or not.

Q. Do I understand you to say that the diminution would have been some less?

A. Yes, there certainly would have been some diminution from this figure, $173,000. All my knowledge in the case is that Mr. Fisher once mentioned to me that there was a wide difference in the effect during the two years. And I remember that it was a matter of surprise to both of us, because the diminution figured here is very nearly the same, one hundred and seventy-three odd thousand dollars one year, and one hundred and seventy-one odd thousand dollars the other. Just what his figures were I do not remember, and I do not remember that he told me what they were.

Q. Can that be ascertained? Of course I do not ask you to prepare tables for us; but could that diminution be ascertained by you and your assistants without too much labor?

349 A. It depends on what constitutes "too much labor." It is quite a job and we are very busy. If it is essential, we could prepare it. I cannot say off hand how much time it would take, but it would take considerable labor.

Q. Do you think that could be ascertained by looking over what you call your working sheets?

A. I understand the working sheets are in such shape that it can be arrived at from them.

Q. It can?

A. So I understand it.

Judge SPENCER: The State's experts have had those sheets?

Mr. LADD: They have been open to their inspection, I understand.

The WITNESS: We have not shut them off from anything they wanted.

Judge SPENCER: The reason we did not figure on that basis we were charging all we could in the rates we had. If we did not charge a maximum, there is some reason that can be explained in the testimony. We shall be glad to furnish that additional computation, provided we have time if, after the evidence is in, the court thinks we should do so. There may be such competition that we cannot charge the maximum rate, but we are taking the actual rates we used.

Mr. LADD: We understand that your people have been very courteous to Mr. Fisher, our expert. He thinks he could tell Mr. Sturgis which of those working sheets he based his computation on which arrived at this result of something like seventy-one thousand, if it would be any help to him.

Judge SPENCER: Anything you want that we can give you,
350 we will be glad to give you.

The MASTER: I haven't any doubt but the experts will be able to agree, fully as well as counsel in the case.

Mr. LADD:

Q. Please look at that statement again, on page 1, for the year 1904, earnings, which reads, "mail, express, etc., $541,660.06, for local; and $705,347.27 for inter-state earnings; will you please tell the court what is included in that etc.?

A. The miscellaneous earnings comprise earnings from mail, express, telegraph, switching, rents, excess baggage and storage, milk traffic, car service and sundry small earnings in the way of bridge tolls and per cents added to bills for work done for outside companies and individuals.

Q. How much switching is included in these two items?

The MASTER: The one for 1904 and the other for 1905.

Mr. LADD: One for 1904. There are two items, local and inter-state.

A. I cannot give you here, at this time, the detail of the local. I can only give you the detail of the total, and Missouri's proportion; that is 137,959.55.

Mr. HAGERMAN: That is the total earnings from switching, both local and inter-state, in Missouri?

A. Yes, in Missouri.
Q. For the year 1904?
A. Yes.
Mr. LADD: That corresponds with my figures.
Mr. HAGERMAN: Excuse me just one moment, please.
Q. And is included in the item "earnings for mail, express, etc.," 1904, on page 1 of Exhibit 1?
A. That is right.

351 Mr. LADD:

Q. Now why (if you think it should not), should that not be dealt with as freight earnings; it is the movement of freight in the State, isn't it, Mr. Sturgis?
A. Not entirely, no sir.
Q. What is it then?
A. There is some passenger switching in there probably, too.
Q. Not probably; do you know whether there is or not?
A. I do not, without examining each item. But the almost total presumption is that there is passenger switching, although by far the bigger proportion of it is freight, undoubtedly.
Q. You have given the figures exactly which correspond with those given to me as the total: Now, can you, from the data in your office, tell us exactly how much of that is freight?
A. No sir, not without going into every single item. I do not believe it would be possible to do it now. Almost all of it must be freight.
Q. Then I will ask you, Mr. Sturgis, if you do not think, whatever may be your system of keeping your accounts, if almost all of that money was earned in moving freight within the State, it ought not, under the circumstances, be included in the freight earnings?
A. I did not say it was earned for moving freight within the State. It is from switching freight cars. There may or may not be freight in those cars.
Q. But I thought you stated it was moving freight.

352 A. No sir, I stated freight, rather than passenger, in a general classification. That is, freight cars rather than passenger cars; but not necessarily in moving freight itself.

Q. What proportion, then, was for moving freight cars as distinguished from freight?
A. No one can tell.
Q. Was there some proportion?
A. Yes, sir.
Q. A large proportion?
A. It depends on the moving of the cars.
Q. Is not the moving of freight cars a part of the freight earnings?
A. It is a part of the freight from an earning standpoint.
Q. Isn't it a part of the earnings, if it is a part of the expense? Why should not the expense of moving empty cars, if you charge the expense of moving the empty cars to the freight earnings——
A. You refer to my giving an answer regardless of our particular practice. Our particular practice in this is borne out by the prac-

tice that is authorized all over the country by all roads, by all State commissions and by the inter-state commission, which invariably classes switching earnings as miscellaneous earnings.

Q. I do not know as I care very much about that in this sort of a case. But one question here is, how much your road has earned in freight earnings in this State, no matter what may be the system of you, or anyone else; it may be the best system of keeping the accounts: I do not dispute that. But I want to find out, if I can, what your company has earned in the State of Missouri which be-

353 longs in this sort of a case to freight earnings.

A. May I ask if that is the idea of apportioning the expense of an added amount of freight for switching?

Q. I would like to know, if I can, how much of these two amounts, in the first place, has been earned by switching freight in this State on your tracks: Can you tell me?

A. No sir, I cannot.

Q. Some has been earned?

A. From switching freight, yes sir.

Q. I am asking now about freight. You seem to distinguish between freight and freight cars. How much has been earned in moving cars which contained freight in this State during that year?

A. We cannot distinguish it, possibly.

Q. Can you approximate it?

A. We cannot approximate it.

Q. You have earned some?

A. Undoubtedly we have earned some.

Q. It is not contained in either of these two amounts?

A. It is contained in these amounts.

Q. I meant to say, in the local and inter-state earnings, as stated in your Exhibit 1?

A. It is not contained in either of those two amounts.

Q. How much of it was earned in moving freight cars?

A. As I said awhile ago, presumably most of it. There may have been some for moving passenger cars.

Q. Can you tell, approximately, the proportion that was earned by moving freight cars and by moving cars which contained freight?

A. No, sir.

354 Q. Have you any idea?

A. Not the slightest.

Q. Could it be ascertained?

A. I do not believe so.

Q. You charge the same for moving the empty car that you do for moving a car that contains freight?

A. In some cases yes, and in some cases no, and the rate charged in different places varies so greatly that they would be no index in the reports that come to us.

Q. Would vouchers, books or anything else that come to you show that charge for moving empty freight —, or the switching of cars that contain freight?

A. Not invariably.

Q. Does it sometimes?

A. Not generally, it may sometimes.

Q. Have you or your assistants made any effort to ascertain how much of this $137,959.55 was for moving freight or freight cars?

A. No, sir.

Q. These freight cars, and cars containing freight which are switched, the work was done by freight crews, wasn't it, conductors, brakemen, engineers and firemen?

A. Not in the sense that you understand freight crews as running on the road, with some exceptions. If it is switching at a small local station, it is done by the road crew which is what you would call a freight crew. There is practically no charge in those cases. At any point where they keep a regular switching crew, the work is done by the yard crew, and not the freight crew.

355 Q. Then I will ask you another question, Mr. Sturgis: Whether the expense of switching freight cars containing freight, is not charged up to freight expense, or expense of freight transportation, in these statements here?

A. No sir, there is no item there that is charged to either freight or passenger in that statement, except on the general question of proportion of expenses to the total business; and if the expense of switching were set aside, it would far exceed any possible earnings from that source, as very little of the switching is collected for.

Mr. HAGERMAN: I don't know whether it is proper to rule on it now, but I would like to make the point now in the way of an objection. This element of switching cannot bear any such relation as they are contending for it. That is an independent thing.

Mr. LADD: I would say, in answer, that switching empty cars is just as much a part of the freight expense as carrying over an empty car to Hannibal to get another load.

Mr. HAGERMAN: He says it is not charged up to freight expenses.

Mr. LADD:

Q. How is it charged?

A. The cost of switching?

Q. Yes?

A. A great deal of it is done without any charge at all.

Q. How is the expense charged?

A. The expense is charged to operating expenses.

Q. You mentioned awhile ago as included in this "etc.", "car service." What is that?

356 A. Car service is the charge for delay of cars which have been either set for loading, or which have come in loaded and have not been unloaded.

Mr. HAGERMAN: Is that the same thing that we call demurrage?

A. Yes, sir.

Mr. LADD:

Q. How much for earnings on account of this car service or demurrage is included in these two items of interstate and local mail, express and etc., for 1904.

A. In the 1904 figure, total from mail, express, etc., is included, $32,808.50.

Q. Why should not that be included in the statement of earnings for local and inter-state freight?

A. Because there is nothing—it has nothing whatever to do with the earnings on freight or on passenger. The payments for car service is strictly a return on value of the equipment, and it is a matter of capital, not earnings.

Q. When you allow a carload of goods to stand on a track waiting, if delayed, waiting to be unloaded by the consignee, who pays for it?

A. If it is there over a certain time, the consignee pays for the delay to the car.

Q. And it is a part of his transportation charges, isn't it?

A. No sir, it is not.

Q. You don't call it that?

A. Not for a minute.

Q. Don't you add it into his transportation charges?

A. No, sir.

Q. Isn't it part of the charge he has to pay you for transporting and delivering his freight to him?

357 A. No sir, that is not any part of the transportation, any more than if you buy a necktie and a coat, the cost of the necktie is a part of the cost of the coat.

Q. He pays it, and his freight earns it, doesn't it?

A. No sir, his freight does not earn it. His negligence earns it.

Q. If he had not delivered this freight to you to be transported, he would not have to pay that demurrage, would he?

A. In many cases the demurrage accrues before he gives us the freight to transport, after we set the cars in.

Q. I am asking about cases where the delay is on his account; if he didn't deliver you that freight to be transported he would not have to pay any demurrage, would he?

A. That may be true.

Q. He pays the demurrage because it is his freight?

A. That may be true.

Q. He pays it to the railroad; that and the other charges for transportation and delivery of that freight to him, doesn't he?

A. No sir, for the transportation and delivery.

Q. It is a return you get for the use of your freight equipment, isn't it?

A. It is to make good a loss because we have not the use of our equipment.

Q. Now, Mr. Sturgis, it is a return you get for the use of your freight equipment, isn't it?

A. No, sir.

Q. It is not?

A. No sir, not in my judgment, because we had not the use of our equipment.

Q. It is a return you get for the loss of the use of your freight equipment?

358 A. Yes sir, in a sense it is paying back interest and other items that are accruing all the time on that equipment.

Q. Now, Mr. Sturgis, on page 1, you allot $6,199,300.13 to the Missouri part of the inter-state earnings—is that right?

A. Yes sir.

Q. On what principle is that allotment made?

A. I explained before how the local was arrived at. We already had the total, and we took the difference for the inter-state, which it must necessarily be.

Q. Then I misunderstood you. I understood you to say you put it on a mileage basis.

A. I said we figured the local on a mileage basis—no sir, I beg your pardon—I said we figured the total on a mileage basis and—no, I will withdraw that too, if I may. It is, in effect, figured on a mileage basis. But it is figured at the same time with the total.

Q. Now let me see if I understand that: If you take a shipment at some point east of the Mississippi river in the State of Illinois along the line of your road 100 miles distant from the Mississippi river, and that shipment is destined to a point on your road 100 miles west of the Mississippi——

A. In Missouri?

Q. Yes, in Missouri.—there is a total mileage of 200 miles (well, leave out the Mississippi river for the present. We will say to the river. You then get $50 for that total transportation. Now, as I understand you, $25 of that is allotted to the Missouri part
359 of the system, and $25 to the Illinois part of the system, because the mileage is exactly the same?

A. Yes, sir.

Mr. HAGERMAN: One-half in the State and one-half out of the State?

Mr. LADD: Yes.

Q. That is the way you arrive at that part of the inter-state earnings which should be credited to the Missouri part of the system; is that right?

A. Yes, sir.

Q. And is the passenger done the same way?

A. Yes.

Q. Now, mail, express, and those miscellaneous items amounting, in 1904, on the inter-state business to seven hundred and seventy-five and some odd thousand dollars; is that reached in substantially the same way?

A. No, sir.

Mr. LADD: I do not care very much about that.

Mr. HAGERMAN: He explained that.

The WITNESS: I explained that at the last hearing.

The MASTER: I understand that the items in that total, under the head of inter-state, are ascertained by taking from the total, the total amounts of the locals?

A. Yes, sir.

Mr. LADD: I do not understand it in exactly that way.

The MASTER: If that is not the way, let the witness testify.

Mr. LADD: I understood you to testify in the last two or three minutes that the amount of inter-state is divided between Missouri and the other States, on mileage basis?

The WITNESS: May I explain that?

The MASTER: I wish you would.

360 A. We have taken and figured first our total Missouri earnings. We will say on freight, for example. Where we came upon a shipment that happened to be inter-state, we divided it on a mileage basis. If it happened to be local, we put it all into the Missouri figure. We make up the total in that way. Perhaps three items will be one way and one item another, as we go over the different reports. But we get the total figure first. We do not ordinarily work up the local. We have the total. Now, after we have the total, then we worked up the local for this investigation, and deducted it from the total, and the balance, we found to be the inter-state. You are both right. In originally making up the total where it was an inter-state shipment, we divided it on a mileage basis, as you have stated.

Mr. LADD: Of course the local and the inter-state, added together, must make the total.

A. Yes, and deducting the local must leave the inter-state. We worked it out together, and then this investigation came along, and they wanted the earnings on strictly Missouri business. We deducted it from the total, and the balance must necessarily be inter-state.

Q. Inter-state is arrived at on a mileage basis, is that correct: If not, I wish to be corrected.

A. Yes, that is correct.

Questions by Mr. Hadley.

Mr. HADLEY:

361 Q. When were these calculations made, Mr. Sturgis?

A. Which ones, Gen. Hadley?

Q. The ones you have just referred to.

A. For the whole State?

Q. Yes?

A. They were made for sections which more or less covered exact State lines shortly after the business was done. But we did not have the figures for the exact State lines, and therefore had to refigure that part of it. For instance, we do not take our operating divisions by State lines.

Q. Were the figures you have given here in this statement showing returns from business generally on the Burlington road in Missouri and the expenses incurred by the Burlington road in Missouri, prepared for the purpose of this suit?

A. Yes sir.

Q. Did you have them upon your books before the necessities of this litigation caused you to put them there?

A. No sir, not exactly. We had to do a good deal of figuring to bring them into the State lines.

Q. Are you familiar with the reports made up by the Burlington railroad given to the State Board of Equalization in the State of Missouri?

A. No, sir.

Q. Did you prepare the statement of earnings and expenses of that road for a report to that Board?

A. They are drawn from the books in my possession.

Q. And under your direction?

A. Yes, sir.

Q. Are the reports made by the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad and Warehouse
362 Commissioners in Missouri made under your direction?

A. They are drawn from the books under my charge.

Q. And it is your supervision of the result of the examination of the books that is submitted as reports to both these boards?

A. So I understand. I am not an officer of the company.

Q. Has the Chicago, Burlington & Quincy Railway Company ever made a report to the State Board of Equalization in Missouri, to your knowledge, as to these earnings and expenses in the State?

A. I don't know whether it has or not.

Q. Have you ever been asked by the officers of your company to prepare a statement of the earnings and expenses of the railway company for a report to that Board?

A. I believe so.

Q. Did you do so?

A. If the figures have been returned, they have been returned from the books and papers in my office.

Q. But you are stating a hypothetical case: If it had been done, it was done from the books and papers in your office. But you can say, can you not, whether you have or have not prepared a report, or know that the report was prepared for the railway company of its earnings and expenses in Missouri, for a report to that Board?

A. What year are you talking about, General? If you specified the year perhaps I could answer the question.

Q. The year ending June 30, 1905, and the year ending June 30, 1906?

363 A. If figures were made up showing the earnings and expenses for those years, they were the earnings and expenses of the railway company, I presume.

Q. Do you know whether the railway company did submit a report of its earnings and expenses in either of those years to either the State Board of Equalization, or the State Board of Railroad and Warehouse Commissioners of the State of Missouri?

Judge SPENCER: I will answer that they did not, and Gen. Hadley knows they did not and knows the reason why they did not.

Attorney Gen. HADLEY: I do.

Judge SPENCER: Why don't you be fair to the witness? You know the report was not made, and the reason given you in writing why it was not made.

The WITNESS: I know the report was not made to the Board of

Railroad and Warehouse Commissioners, but whether to the other Board, I do not know of my own knowledge.

Gen. HADLEY: I certainly was not trying to be unfair to the witness.

Judge SPENCER: You knew what you were asking the witness, you knew no such statement was made, and you were told that no such statement was made because it was made in the name of the railway company, and if furnished in the name of the railroad company it would be a duplicate.

Gen. HADLEY: That is what I am trying to get him to state.

Q. Was the report furnished to the State Board of Railroad and Warehouse Commissioners, and the report furnished to the State Board of Equalization of the State of Missouri, furnished
364 under your direction and supervision?

A. I cannot tell you in regard to the first one.

Q. That is the one for the year ending June 30, 1906?

A. The one ending June 30, 1906 has not yet been made.

Q. The one for the year 1905 is made, you say?

A. Yes, sir.

Q. In that report, do you remember what appeared as the gross and net earnings of the company?

A. No sir, I do not.

Q. In that report, was the item of expense, proportion of rental, figured as a part of the expense of the railway company?

A. It was a report of the railroad company, and any rentals that the railroad company paid were shown as rentals in that report.

Q. I am getting at the matter, Mr. Sturgis, as to whether you remember whether the item of proportion of rental was included as a part of the expense of the railroad company in that report?

A. The rentals paid by the railroad company were all included in the operating expenses of the railroad company.

Q. Then in that report which I have here and which I submit to counsel if they question the accuracy of it, you show a net earning per mile on the system in the year ending June 30, 1905, of $2,534.51; now, I understand you to say that that net earning per mile of the system was arrived at after taking the proportion of rental as part of the expenses?

365 A. You are talking about the railroad company's report, and the fact as stated by you is correct if you recall that any figure there on the earnings per mile covered the system. That is my recollection. I do not show in that report that they were the earnings per mile in the State of Missouri.

Q. No sir, you show it for the average mile over the system.

A. I presume that is the figure.

Q. What I want to get at and want your statement upon, because you ought to know more than I, is as to whether that net figure was arrived at after deducting as part of the expenses proportion of rental?

A. After deducting all the rentals paid by the railroad company?

Q. That is the point: Did the railroad company pay any rentals.

A. The railroad company paid rentals, certainly.

Q. To whom?

A. To a variety of persons and corporations.

Q. This item of expense you have in your statement, the proportion of rental, that is rental paid by the railway company to the railroad company, is it not?

A. You have been asking me about the railroad company's report. I have stated frankly the rentals paid by the railroad company and of course the rentals paid by the railway company to the railroad company would have no place in that report, and would cut no figure.

Q. Would that item amounting to $3,169,369, which ap-
366 pears in that statement as part of the expenses of 1904 of the railroad company—were any of those figured as part of the expenses in the report by you to the State Board of Equalization for the year 1905?

A. That figure does not appear here on the report of the railroad company.

Q. As part of the operating expenses?

A. No, sir.

Q. You put it in this statement of yours as part of the expenses of the railroad company?

A. Not of the railroad company.

Q. Of the railway company?

A. Yes, sir.

Q. This proportion of rental simply means, doesn't it, the amount of interest on the bonds and dividend upon the stock of the railroad company?

A. It means rental, as stated, paid by the railway company to the railroad company, and it cannot form and did not form any part of the report of the railroad company to the Commissioners.

Q. That rental was determined by the amount of the dividends on stock, the interest upon the bonds of the railroad company, wasn't it?

A. It was determined primarily by the lease.

Q. And the lease provided for payment of interest upon bonds of the railroad company and of dividends upon stock, as the amount to be paid under the lease?

Objected to by counsel for the railroad companies, because the lease will be put in evidence, and it is consuming unnecessary time to go through and have this witness—and it is unfair to the
367 witness without the lease before him, to give the contents.

Objection overruled.

A. Those items do influence a part of the rental. I think that was the question you asked, whether it influenced them?

Q. No sir, I said, whether it included them. Whether it was determined by the amount of interest on the bonds and stocks, etc.?

A. It influences in the sense you use the word "determine."

Q. The facts in the case are these—this is the way I understand them, and I want you to tell me if I am right: If this was the statement of the Chicago, Burlington & Quincy Railroad Company, it

would show, instead of net earnings amounting to $2,004,348.11 upon the state and inter-state business done in Missouri in 1904, the net earning increased by the sum of $3,169,369?

A. The supposition is that you were asking me what the figures in the report would have been made by the company, provided it had not made a lease which it made two or three years before. It is impossible for me to say. They may have been absolutely changed.

Q. Is not the amount $3,169,369 the amount that the Chicago, Burlington & Quincy Railroad Company paid in 1904 as dividends upon its stock and interest upon its bonds?

A. And sinking fund, yes sir.

Q. Then cannot you answer the question: If the statement
368 had been made by the railroad company, instead of by its lessee, it would have shown the net earnings to be increased by the sum I have mentioned?

A. My judgment is that under oath I cannot answer that.

Q. You don't think you can answer that question?

A. My answer seems to have given you the information you desired, without an answer to that. I cannot swear to that under oath.

Q. Does the statement which you reported, or which you say you had knowledge of, which was made by the railroad company to the State Board of Equalization, or the Board of Railroad and Warehouse Commissioners in Missouri for the year ending June 30, 1905, include as a part of the expenses of the railroad company the item of "proportion of rental" which you have included as a part of the expenses of the railway company?

A. It does not include that figure as an operating expense. I refer to the report of the Board to the Railroad and Warehouse Commissioners. I do not refer to the other. I did not make the other up.

At this point, by agreement of counsel, the Master adjourned the further hearing of testimony herein until tomorrow, Wednesday, Sept. 19, 1906, at 10:00 o'clock a. m.

369 CHICAGO, WEDNESDAY, *Sept.* 19, 1906.

Met pursuant to adjournment as above, at No. 209 Adams St., Chicago, when the following proceedings were had:

Gen. HADLEY:

Q. On adjournment last evening I was asking you, Mr. Sturgis, about what items of expense were included in the report of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners of Missouri, and the State Board of Equalization. You stated, if I remember correctly, that the item of proportion of rental which appeared in the statement presented in this case was not part of the expenses charged against the railroad company: Did I understand you correctly?

A. It was not part of the operating expenses reported as such.

Q. Was it reported as part of the operating expenses in your statement furnished in this litigation?

A. In this litigation the first sheet of Exhibit 1 contains the rental with the operating expenses.

Q. I want to get it so there will be no confusion: Then the item $3,169,369 is not charged as expense against the railroad company, but it is charged as expense against the railway company?

A. Your framing of the question is——

Q. There is no catch in the question.

A. I am merely trying to answer it so there will be no misunderstanding in my answer. It is not a question of charging it against the railroad company as an expense. I now say, as I said before, that it is not charged by the railroad itself as an
370 operating expense. Now, my answer probably covers your meaning, but it does not cover your words.

Q. It is charged by the railroad company as an expense aaginst income, is it not?

Judge SPENCER:

Q. Have you a copy of the statement that the railroad company made to the State Board of Equalization?

A. No sir, but I am very familiar with it.

Q. Do you know, without looking at the statement, or do you care to look at the statement?

A. No sir, I know it.

Mr. HADLEY:

Q. I say, it is simply charged as an expense against income, to the account of the railroad company.

A. The interest on the bonds, the sinking fund, taxes and dividends are charged against income, and are so shown in the report in the State Board of Railroad and Warehouse Commissioners.

Q. Of the railroad company?

A. Yes sir, of the railroad company.

Q. In the statement made by the railway company, you charged that item, which is the interest upon the bonds, and the dividends upon the stock, and the sinking fund, of the railroad company, as part of the expenses of the railway company: this item of $3,169,369.

The MASTER: Are you referring to Exhibit 1?

General HADLEY: Yes, your Honor.

A. That figure there is not interest on bonds. It is rental,
371 and is so charged in this report.

Q. It is charged to the railway company as rental?

A. It is charged to the railway company as rental, and is not interest.

Q. That is the amount, is it not, that is apportioned to Missouri, of the total amount of the dividends upon the stock and the interest upon the bonds of the railroad company?

Mr. HAGERMAN: Aren't you just running into an argument with

the witness? The statement shows exactly what they paid, and how they paid.

A. It seems to me that this has all been answered.

Mr. HAGERMAN: I am only doing this to reach a point so your Honor may understand the matter. There is a lease between the railroad company and the railway company by which certain funds have to be paid by the railway company as a rental. That lease shows exactly what it is.

The MASTER: The Attorney General is directing his inquiries along that line, as I understand it.

Gen. HADLEY: You know it, and I know it, but I want to get the information to the Master through this witness.

Mr. HAGERMAN: Instead of getting at it by argumentative questions, why not put the lease in and start from that.

The MASTER: Counsel must take their own course. I cannot direct that.

Gen. HADLEY: If Mr. Hagerman makes for this witness the admission that the item of $3,169,369 is the proportion of the dividends upon stock and interest upon bonds, and the sinking fund, which is apportioned to Missouri, of course there is no purpose in the question.

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Mr. HAGERMAN: The trouble about it is, you conclude it is not a rental, and we claim it is. On the facts, there is no difference between us.

(Previous question read.)

The MASTER: What is that amount?

Gen. HADLEY: Being the item in the expense account for 1904 in Exhibit 1.

A. I do not understand how I can answer your question explicitly. The figure shown here (indicating statement) is rental. Now, at the end of yesterday's testimony, as I remember it, I explained that that was based on the amount of interest, sinking fund, taxes and dividends, that the railroad company paid. But I cannot, as a witness, state that this is two different things; that it is interest, and that it is——

Q. That is a satisfactory answer. But you have included taxes, while you have taxes charged separately.

A. I should not have mentioned taxes just now.

Mr. LADD: Let me make a suggestion, and that is, that the lease be now offered in evidence.

Mr. HAGERMAN: That was our suggestion sometime ago.

Mr. LADD: We offer in evidence the lease from the Chicago, Burlington & Quincy Railroad Company to the Chicago, Burlington & Quincy Railway Company, dated Nov. 20, 1901. Also copies of the schedules or lists referred to in said lease.

(The paper referred to is marked Exhibit 2, and is admitted, by agreement of counsel, as part of the cross-examination of this witness.)

373 Mr. HAGERMAN: In view of introducing the lease at this time, I think it is only fair to the witness, to state, before going further with the witness, that the proportion of rental charged here is the rental charged under this lease.

Mr. LADD: We will get at that presently, and, if he is not familiar with the lease, of course will let him look at it.

Mr. HADLEY:

Q. The significance of the term, "proportion of rental," as appears in Exhibit 1, is the proportion of rental assigned to the Missouri portion of the business, isn't it?

A. Yes sir.

Q. That is, you take the entire amount of money paid under this lease by the railway company to the railroad company, which was, as I understand it, the sum of the interest upon the bonds, the dividends upon the stock, and the sinking fund, amounting to $15,658,941.34, and then took 20.24 per cent of that to get the result of $3,169,369.73. (I will furnish you the compilation furnished us by our expert, which contains the figures, which I think were compiled with Mr. Sturgis.)

A. You are correct.

Q. Why did you take 20.24 per cent of the sum I referred to, being the amount of the rental; or from the other stand-point, the amount of the sum of the interest upon the bonds and the dividends upon the stock and the sinking fund?

A. As shown by that statement you just showed us, that is the gross earnings proportion. That is, the gross earnings or business of the State of Missouri, is 20.24 per cent of the whole property leased to the railway company.

374 Q. And that includes the entire Burlington system; that is, what is known as the Burlington system?

A. Yes sir.

Q. That is, the gross amount of the business done in Missouri, state and inter-state, is 20.24 per cent of the entire earnings of the entire system: Do I understand you correctly?

A. Everything covered by the lease.

Q. All the business of the entire system covered by the lease?

A. Of the entire property, yes sir.

Q. What percentage of the mileage of the entire system is located in the State of Missouri? On the statement furnished in Exhibit 1, you put the total number of miles operated at 8,326.16; and the miles operated in Missouri as 1,031.89.

Judge SPENCER: That is a matter of calculation.

Gen. HADLEY: I want to get it in the record.

Mr. HAGERMAN: You mean for 1904?

Gen. HADLEY: Yes sir, that is what I am talking about.

A. You asked what per cent?

Q. Yes?

A. It is between 12 and 13 per cent.

Q. Then there is only between 12 and 13 per cent of the mileage

in Missouri, and the proportion of business is between twenty and twenty-four per cent?

A. Yes sir.

Q. In 1904, according to the report made by your company to the State Board of Railroad and Warehouse Commissioners, the total gross earnings of the entire system for the year ending June 30, 1904, amounted to $62,638,378: You remember that that is the correct amount as given by you to the officers who made this report?

A. It is probably correct; it would be about that; I don't
375 remember the exact figure.

Q. And the operating expenses for that year amounted to $40,451,472, leaving the net earnings at $22,095,906: in other words, the gross earnings per mile were $7,413, and the operating expenses and taxes, $5,066; so the net earnings were $2,347 per mile: That is the report you referred to?

A. Yes sir, as having knowledge of for the whole property?

Q. Yes, for the whole property?

A. Yes sir.

Q. Then, in answer to the question as to what were the earnings per mile of the system in Missouri, your answer was, "unable to state, as we have no record". I understand you to say you had no record until the exigencies of this litigation caused you to apportion earnings and expenses in a way you had not done before?

A. That is correct.

Q. In 1904, according to your statement, Exhibit 1, what were the net earnings of the railroad company upon the business done in Missouri?

A. Its only source of income was the amount it received in rental from the railway company.

Q. Well, leaving out the railway company, Mr. Sturgis, according to that statement, let me ask you if it was not a fact that in the year ending December 31, 1904, according to this statement, the net earnings of the Burlington railroad Company, upon that business done in Missouri, was the sum of $3,169,369, and $2,004,348——

A. I do not follow you.

376 Q. After there had been paid the expense of conducting transportation, maintenance of equipment, maintenance of road and structures, general expenses and taxes out of the money received from conducting the state and inter-state traffic in Missouri, what was the amount remaining, according to the statement furnished us, known as Exhibit 1?

A. It was purely a matter of figuring, and I haven't the figures here.

Q. Then it is the addition of what two sums?

A. The addition of four figures here, and subtracting that from the earnings.

Q. Is it an addition simply of what you call "proportion of rental and net earnings of the railway system"?

A. Do you include taxes with the operating expenses on that?

Q. I included taxes.

A. It would be the sum of those two figures.
Q. The figures $3,169,369——
A. The net earnings of the railway company.
Q. And the net earnings of the railway company?
A. Yes sir.

Mr. HAGERMAN: Have you excluded rental as an expense?
Gen. HADLEY: Yes, counting that from the standpoint of the railroad company.

Q. Then, in the year ending December 31, 1904, Missouri business resulted in net earnings of $5,173,717, didn't it?

Mr. HAGERMAN: That is to say, if the proportion of rental is excluded from expenses.
377 Gen. HADLEY: Did I figure it correctly?

A. Yes sir, I had not stated those were the correct net earnings. I will say they are the correct earnings as shown by these figures, leaving out the proportion of rental.
Q. I am simply getting at the result for the purpose of illustrating a theory I have in the case.
What then, would be the earnings per mile, upon Missouri business, as shown by that result?

Mr. HAGERMAN: On the same basis?
Gen. HADLEY: Yes, on the basis I have stated, it would be the sum of $5,173,717, divided by the number of miles in the State of Missouri.
A. You want me to do a lot of figuring for you on the supposition that something might be so.
Q. No sir, I want you to give me what the net earnings is upon the business done in the State of Missouri by the Burlington Railroad Company, on the same theory that you made your report to the State Board of Equalization for the entire system?

Judge SPENCER: He has answered that by the net earnings, and if you divide it by the number of miles, you will get it.
Gen. HADLEY: Why shouldn't he do that?
The MASTER: I think the cross examination is entirely proper.
The WITNESS: What I want to point out is, that every answer I make, I have got to state that it is not the net earnings as shown by this report. And I must add to that it is not net earnings
378 as shown in the report to the railroad Commissioners.
Gen. HADLEY: I understand that.
Judge SPENCER: Mr. Sturgis, you answer what he asks you on the basis he assumes. That does not conclude us, or does not conclude you.
Gen. HADLEY: I don't want to commit you to some theory of yours or your attorneys. I want to be entirely fair with you.
A. (After making calculation.) $5,013 a mile.
Q. Then, upon the basis of that theory, and your statement marked "Exhibit 1", the earnings upon the state and inter-state business in Missouri, for the year ending December 31, 1904, were

twice as great as the average earnings for the entire system, for the year ending June 30, 1904, weren't they, Mr. Sturgis?

A. If the figures quoted from the report, and that $2,000 is correct, this is certainly twice as great.

Q. By the report for the year ending June 30, 1905, to the State Board of Railroad and Warehouse Commissioners, and the State Board of Equalization in Missouri, it appeared that your net earnings were $2,534.51 per mile, average earnings for the entire system, and you also stated at that time you had no figures separately for Missouri: do you remember that to be correct?

A. Yes sir, I know we didn't have them.

Q. Was the proportion of earnings, adopting the same theory of computation you have just adopted for 1904, approximately the same for 1905?

A. For the purposes of Exhibit 1?

379 Q. Yes?

A. Yes.

Q. That is, the net earnings upon the business, state and interstate, done by the Burlington in Missouri, would be about $5,000 per mile?

A. It would be less, considerably less.

Q. About $4,500 per mile, for that year? That is just an approximation. I don't care to have it exact.

Judge SPENCER: In that neighborhood?

Gen. HADLEY: Yes, in that neighborhood.

A. About three thousand dollars per mile.

Q. Well, you would have the sum of——

The WITNESS: No sir, it would be about four thousand dollars a mile.

Q. In 1905 you charged in, as maintenance of road and structure, over half a million dollars for the reconstruction of the Kansas City bridge, didn't you?

A. Against the whole system?

Q. Yes?

A. Yes.

Q. That money has not been expended yet, has it?

A. Not yet.

Q. And in 1904 you charged against the item of maintenance of road and structures, how much for the Kansas City bridge?

A. $100,000.

Q. And in 1905 you charged as an expense to that account, for expenditures that would be made in the future, in reconstruction, $550,000, wasn't it?

A. Yes sir.

Q. So that decreased the net earning for 1905, and increased the expenses, according to statement, Exhibit 1; that is true, isn't it?

A. That was the effect of it.

380 Q. Has that $100,000 been expended yet?

A. No sir.

Q. So, Mr. Sturgis, if I understand you correctly in your testi-

mony, upon your loss in Missouri, in the year 1904, it amounted to $1,773,263 That was a loss on local freight business, was it?

A. What figure are you referring to?

Q. I am giving the figure you gave as a deficit yesterday.

A. On what basis?

Q. On your basis.

Judge SPENCER: We figured it two ways, though.

Mr. HADLEY:

Q. I mean, by counting in rental and taxes as expenses for the first figure, made your deficit upon State business $1,773,263.94; omitting taxes and rental it made your loss on State business $809,483.16?

A. $809,483.16 is the correct figure, excluding the rental and taxes; including the rental and taxes it is $1,773,263.94.

Q. Then, according to your contention, if I understand you correctly, Mr. Sturgis, the Burlington Railroad Company, doing a State freight business, amounting to $1,525,158, lost in 1904 $1,773,263.94?

A. Yes sir.

Q. Now what was the percentage of expense in handling that business?

A. It is a straight case of calculation.

Q. Just give it approximately. I don't care for the exact figure.

A. 200 per cent.

Q. About 200 per cent?

A. Yes sir.

Mr. LADD: In stating yesterday that your loss on a cer-
381 tain basis in doing you- local freight business was $1,773,263, did you take your earnings to be $1,525,158.92, or that amount reduced by $173,770.44: You understand my question?

A. Yes sir. That amount reduced so as to show the correction on sheet 2 of Exhibit 1.

Mr. LADD: That is what I thought.

Gen. HADLEY: And then, taking it from the standpoint of the railroad company, in handling or doing a business amounting to $1,525,158, your company would have lost, under the provisions of this law, $809,483?

A. After paying the fixed charges and dividends——

Q. No sir, I was omitting that. The loss would have been only $809,483?

A. As the result of operating only.

Q. On State freight?

A. Yes sir. Operating only without charging any portion of interest for fixed charges at all.

Q. Without counting dividends upon the stock, interest on the bonds, or taxes?

A. Exactly.

The MASTER: Does page 2 of Exhibit 1 show that figure, Mr. Sturgis?

A. No sir, the figure that the gentleman refers to is the figure that you have in your memorandum there (indicating).

The MASTER: Do I understand this $809,483.16 to be the loss or deficit computed upon the theory that the Act of 1906 is in effect?

A. Yes sir, that was the question brought out by Mr. Ladd.

Mr. LADD: And upon the theory that the cost of local business is three to one.

382 Mr. HAGERMAN: And upon the theory that rentals and taxes are excluded.

Gen. HADLEY:

Q. And that loss which would have been suffered in 1904, of $809,483.16, upon State business, of that only $173,770, as I understand it by your statement would have been occasioned by observing the provisions of this law?

A. That did reduce the earnings by that amount.

Q. If it had been observed, so then, your loss on your basis of calculation, even if this bill had never been passed upon State business in 1904, would have been the amount arrived at by subtracting the $173,770 from the $809,483, wouldn't it?

A. No sir, the other way round. We would have added it.

Q. You would not have lost that much, if, in 1904, you had observed the provisions of this law, you would have lost $809,483; is that correct?

A. Yes sir.

Q. Now, if the law had not been passed, your loss would have been not much less, wouldn't it?

A. Yes sir, that much less.

Q. So, according to your calculation the Burlington Railroad Company, leaving out of consideration this law of 1905, did, in 1904, lose the difference between $809,483 and $173,770, which is approximately $630,000?

A. Yes sir.

Q. Isn't it a fact within your knowledge that during the year 1904, when, according to your calculation, you say they were losing that sum of money, the railroad company was charging less

383 than the rates fixed by the order of the Board of Railroad and Warehouse Commissioners?

A. No sir, I don't understand it so.

Q. Isn't it a fact that during the time you say you were losing this amount of money, you were carrying some freight for rates less than even those fixed by the law of 1905?

A. That is in some cases correct. We were carrying some freight for less.

Q. On those commodities not affected by the Act that way, do you know what the rates then existing were, as fixed by the order of the Board of Railroad Commissioners, as compared with the rates you were really carrying freight for?

A. I don't understand your question.

(Previous question read.)

A. I don't know.

Q. Then you don't know whether, in the doing of this State business in 1904, the railroad company, or the railway company (I do not make any point on that distinction) was getting for its freight as much as it could have gotten under the orders of the Board of Railroad and Warehouse Commissioners; that is, you don't know that they were charging up to the rates fixed by that Board?

A. Leaving out the Act of 1905?

Q. Yes.

A. I don't know.

Questions by Mr. LADD:

Q. Mr. Sturgis, I want to get back for one or two questions to this item of $3,169,369.73, proportion of rental for year 1904, as shown by the first page of Exhibit 1: I will ask you if what is there
384 designated as proportion of rental are the same items referred to in paragraphs 1, 2 and 3 of Sec. 1, Art. 3, of the lease from the railroad company to the railway company, marked Exhibit 2?

A. Yes sir.

Q. I understood you to say in answer to a question of Gen. Hadley, that the total amount of that rental for the year 1904, was $15,658,-941.34?

A. Today?

Q. Yes.

A. I have not given that figure, according to my recollection. He asked me, I think, if those figures were not the figures.

Gen. HADLEY: Here are the figures (indicating statements prepared by the State's experts) I think that was checked up between you and Mr. Fisher, wasn't it?

A. Yes sir, $15,658,941.34.

Mr. HAGERMAN:

Q. What is that? Total rental paid under the lease for the year 1904 for the entire system?

A. Yes sir.

Mr. LADD:

Q. Now, I think you stated that to reach the amount of $3,169,-369.73, you took 20.24 per cent of that total amount, that being the ratio between Missouri's total earnings and the total earnings of the entire system: That is right, is it?

A. Yes sir.

Q. How much of that $15,658,941.34 is made up of payments to the sinking fund?

A. $721.716.98.

Q. I will ask you if you know whether any of the mortgage- upon the Missouri part of the system, provide for any sinking fund?

A. The mortgages that apply directly on different parts of the road in Missouri, and which are still outstanding, have not any
385 sinking fund provision. But the bonds of the C. B. & Q. Railroad Company, and the proceeds from those bonds have

been used to the best of my knowledge and belief, in acquiring and building up the Missouri properties.

Q. To the best of your knowledge and belief?

A. In other words, on the statement to which you refer as having been agreed to by the expert and myself, there are shown certain securities applying directly on Missouri properties. Those were bonds assumed by the railroad company, bonds of the original company, and they cover only parts of the Missouri property.

Mr. HAGERMAN: The witness has not finished answering Mr. Ladd's question as to whether they provide for a sinking fund.

A. Those particular bonds do not provide for the sinking fund.

Mr. HAGERMAN: That is about the old mortgage; what about the new?

Mr. LADD: He has not said anything about any new mortgage.

Mr. HAGERMAN: You interrupted him.

Mr. LADD: No sir, I did not. Really, I sat here very quietly until he got through.

The MASTER: If you have any addition to make to your answer, Mr. Sturgis, you may make it.

A. I think my answer covers the whole answer I expected to make.

Judge SPENCER:

Q. In that connection, the mortgage that covers the new bonds, does that provide for a sinking fund?

A. There are, as I have said, bonds of the railroad company which have sinking fund provisions.

386 Judge SPENCER: You have not stated that: That is what we are talking about.

Mr. LADD: Bonds of the C. B. & Q. Railroad Company? Is that right?

A. That is right.

Q. Are those bonds secured by mortgage?

A. In some cases they are, and in other cases they are not.

Q. Are any of those mortgages securing bonds upon the C. B. & Q. Railroad Company, mortgages upon that part of the system which is situated in Missouri?

A. I shall have to go to the records and find out.

Q. Will you please do that sometime today?—not now, later?

A. Not now, but later; gladly.

Q. Now what is the amounts of the mortgages, which you know of, upon the Missouri part of the system, the principal of the bonds, unpaid and outstanding?

A. The mortgages, which are four, covering portions of the property in Missouri, cover not only property in Missouri, but also property in Iowa. I don't mean that each of the four does, but taking the four mortgages, some of them cover Iowa property.

Q. I suppose you refer to the Hannibal & St. Joseph Company as one, do you not?

A. The Hannibal & St. Joseph is, I believe, entirely in the State of Missouri.

Q. How much is it?
A. The amount outstanding Dec. 31, 1904, was $8,000,000.
Q. At what rate of interest?
A. 6 per cent.

Q. And the Kansas City, St. Joseph and Council Bluff,
387 what is the amount of that?

A. $5,000,000 covers the road not only in Missouri, but in Iowa also.
Q. At what rate per cent?
A. 7 per cent.
Q. And what else?
A. The Tarkio Valley.
Q. How much is that?
A. $166,000 outstanding Dec. 31, 1904.
The MASTER: Exclusively in Missouri, or in both States?
A. I believe that property runs up into Iowa.

Mr. LADD:

Q. Is it a short road?
A. Yes sir, a short road.
Q. What is the rate per cent?
A. Seven per cent.
Q. What else?
A. The Nodaway Valley.
Q. What is that?
A. $148,000 at 7 per cent.

The MASTER:

Q. Is that exclusively in Missouri?
A. I think that runs into Iowa, too. I don't remember just where the corporate line is.

Mr. LADD:

Q. Any more?
A. I believe that is all. The Atchison & Nebraska may touch Missouri, but I am not familiar with it without looking at the records.
Q. With some minor additions, if there are any additions, those are all the mortgages, underlying mortgages, on Missouri property?
A. No sir, I said I would have to investigate that; look it up.
Q. This is all you know of at present?
A. That is all I have positive knowledge of at the present time.
Q. Will you tell me, in round numbers, what the annual interest is on these four mortgages?
A. $852,715. You have it on the statement before you.

388 Q. Will you tell the court how much of the total amount, $7,178,487.30, interest on bonds on the entire system, has been allotted to the Missouri part of the system, and included in the $3,169,369.73? In other words, what is 20.24 per cent of $7,178-487.30?
A. About one and a half millions.

Q. You say the actual interest on the bonds was how much, on the Missouri part?

A. $852,715 is the interest on certain bonds which are still outstanding from old companies which formed a part of our Missouri lines, but are a very small part, comparatively of the cost of them.

Q. And you think the Kansas City, St. Joseph & Council Bluffs, and the Tarkio, may run up into Iowa. The first you know does, and the second may possibly run up into Iowa?

A. The Tarkio and the Nodaway Valley may both run up a few miles in Iowa.

Q. Now, the total sinking fund payments, included in this $15,000,000 and odd thousand dollars, as I figure it,—and if I am wrong I got these figures from some one else—are $721,716.98: Is that correct?

A. That is correct.

Q. In your statement you have apportioned 20.24 per cent of that to the Missouri part of the system, and it goes to make up the $3,169,369.73: What is, if you can tell me without too much trouble, 20.24 per cent of $721,716.98, the sinking fund?

A. About $140,000, in round figures.

Q. Do you keep a sinking fund account?

A. Yes sir.

Q. Is it divided up?

A. What do you mean?

Q. On your books, the sinking fund is a fund appropriated and accumulated from time to time, isn't it, in anticipation of the maturity of the principal of the debt; Is that right?

389

A. The ordinary working of a sinking fund, where there are various debts in detail, is to set aside a certain fixed sum every year, and pay it over to certain trustees of the sinking fund, who are outside parties ,and I believe you would call them "trustees under the mortgage"; they take care of that fund. and it either goes to pay off the bonds at maturity, or it may pay off the bonds under certain conditions, and cancel them each year as the fund accumulates.

Q. The purposes of a sinking fund, then, isn't it, is to provide a fund in advance of the maturity of the bonds, with which the bonds may be fully or partially paid off, either at their maturity, or anticipating their payment, and it is devoted to that purpose, isn't it?

A. That is correct. It is practically setting aside a part of the interest for the paying off of the bonds. The fact of the sinking fund existing, probably secures a lower rate of interest on the bonds.

Q. If there is a property, any kind of a property, with a mortgage to start on of $1,000,000 upon it, and the time comes when, by the accumulation of a sinking fund, $500,000 has been provided for the purpose of paying off those bonds, the owners of that property are worth $500,000 more than they were when they started, weren't they—if there was nothing else to intervene? It gives the property that much more value, if you have a fund already accumulated and laid aside, devoted to the removal of the encumbrance?

390

A. That is a fact, as I understand it.

Q. The property is just that much more valuable on account of the sinking fund, as if they had bought $500,000 more of property and added it to their investment.

The MASTER: You mean the equity of the mortgage in the property?

Mr. LADD: Yes.

A. I don't think your last statement is correct.

Q. Isn't it substantially correct?

A. No sir, I think it was very materially wrong.

Q. How was it wrong?

A. I think it is practically the difference between one-third and one-half. This is a theoretical discussion, and it is hard to go under it. Those are broad financial questions, and not directly a matter of figures on the books. If you want an argument on it——

Q. I do not want to go into a broad financial argument, because I would not understand it and do not pretend that I would. I just want to go into a common sense question, and if it is not common sense you will know it.

What I ask you is, whether a property which has a one million dollar mortgage on it, and had five hundred thousand dollars in cash laid aside to meet that mortgage, is not worth five hundred thousand dollars more than it would be if that five hundred thousand dollars were not set aside?

A. Yes sir.

Q. What does 20.24 per cent of the $721,716.98 sinking fund amount to in round numbers?

A. About $140,000.

391 Q. Isn't it about $145,000?

A. Multiplying 72 by 2, it is nearer 145,000 than it is 140,000.

Q. It is over $145,000, isn't it?

A. No sir, I don't think so. I can work it out in detail, if you wish.

Q. I wish you would do so, and let us have this little question settled right here.

A. Haven't you it already worked out by your expert?

Q. No sir, I am just guessing at it.

A. (After calculating.) I make it $146,075.52.

Q. Now, Mr. Sturgis, was that amount of $146,075.52 set apart on your books in a separate fund, designated as a sinking fund for the payment of the mortgages on the Missouri part of the system?

A. No sir.

Q. Any of it?

A. It was set aside without any reference to whether a mortgage was in Iowa, Missouri or Nebraska; and was set aside as a sinking fund on certain specific bond. And that was not the $146,075.52, but in its total amount.

Q. The whole amount?

A. Yes sir.

Q. The whole amount of the bonds?

A. No sir, the whole amount of the sinking fund, and not the 20.24 per cent.

Q. Was the whole amount of the sinking fund set off in one account?

A. The whole amount of the sinking fund was set off as against the different bonds which have sinking funds, and one amount for the whole property.

Q. Suppose a bond did not have any sinking fund?

A. Then no amount was set aside for it.

Q. Then for those four roads in Missouri which you men-
392 tioned, which did not provide for any sinking fund, no part of that amount was set aside?

A. No amount was set aside for any one of those four classes of bonds, of which I gave you the detail.

Q. I have an item here, and I would like to ask you if it is correct, as dividends on stock going to make up this fifteen million and odd thousand dollars: $7,758,737: Is that right?

A. That is correct.

Q. What rate of dividend is that?

A. 7 per cent.

Q. On what?

A. On the stock of the railroad company.

Q. The Chicago, Burlington & Quincy Railroad Company, outstanding. What is the outstanding amount of stock of the Chicago, Burlington & Quincy Railroad Company?

A. I don't believe I have the exact figure. It is a hundred and ten millions, approximately.

Gen. HADLEY: $110,839,000?

A. A hundred and ten millions, eight hundred and thirty thousand and some odd dollars, and multiplying that by seven gives the amount.

Q. So that this item of $3,169,369.73, which, on page one of your statement Exhibit 1, you have charged in as a part of the expenses of operating the Missouri part of the system,—in that amount is included 20.24 per cent of 7 per cent dividends on the entire capital stock of the Chicago, Burlington & Quincy Railroad; something over one million four hundred thousand dollars for interest on bonds, and a little more than $146,000 for sinking fund: Is that correct?

393 A. It is.

Q. And none of the Missouri mortgages provide for any sinking fund?

A. None of the four I mentioned do.

Q. And no part of that sinking fund has been placed on your books and devoted to the payment of the principal of those Missouri mortgages? And the interest on the bonds placed on the Missouri property, amounts to, you say, about $850,000?

A. I do not say that is the interest on the bonds placed upon the Missouri property. I say that is the interest on the four specific classes of bonds, to which you referred.

Q. And you are going to find out whether there are any other

bonds for which the Missouri property is pledged, by way of a mortgage, and let us know, is that right?

A. That is correct. You understand there are bonds which have no mortgages.

Q. Now, without going into detail, I will call your attention to a similar item for the expenses of 1905, amounting to $2,893,614.75, entitled in your statement Exhibit 1, "Proportion of rental," and ask you if that is constituted in substantially the same way?

A. It is.

Mr. LADD: I want to offer in evidence, and then ask Mr. Sturgis some questions in connection with this paper, a copy from the office of the Secretary of State, of the Articles of Association of the Chicago, Burlington & Quincy Railway Company.

These articles were filed for record in the office of the Secretary of State of the State of Iowa, on October 17, 1901, and filed
394 in the office of the Secretary of State of Missouri, and certificate issued on October 31, 1901.

This paper is marked "Exhibit 3."

Said Articles of Association are in words and figures following, to-wit:

395 Q. Were you at that time, Oct., 1901, and previous thereto, in the employment of the Chicago, Burlington & Quincy Railroad Company?

A. Yes sir.

Q. And you have been in the employment of that company, or Chicago, Burlington & Quincy Railway Company ever since, until the present time, haven't you?

A. One or the other, yes sir.

Q. What is your position, Mr. Sturgis?

A. General Auditor of the Chicago, Burlington & Quincy Railway Company.

Q. Have you any connection with the Chicago, Burlington & Quincy Railroad Company?

A. I have no official connection with the Chicago, Burlington & Quincy Railroad Company.

Q. Is that organization kept up?

A. It is, I believe.

Q. Where are the offices of the Chicago, Burlington & Quincy Railway Company? Is this hearing being held in its offices in Chicago?

A. Yes sir.

Q. Where are the offices of the Chicago, Burlington & Quincy Railroad Company, if they have any?

A. I don't know.

Q. Where are the books of the Chicago, Burlington & Quincy Railroad Company kept, if that company has any books?

A. They are kept in Chicago.

Q. In this building?

A. In this building.

Q. Who keeps those books?

A. They are kept under my charge.

Q. Who is the president of the Chicago, Burlington & Quincy Railway Company?

A. Mr. George B. Harris.

396 Who was the president of the Chicago, Burlington & Quincy Railroad Company in October, 1901?

A. My recollection is it was Mr. George B. Harris.

Q. Who was president of the C. B. & Q. Railroad Company at the time the C. B. & Q. Railway Company was organized in October, 1901?

A. My recollection is, Mr. George B. Harris.

Q. How long has Mr. Harris been president of the railway company?

A. I cannot tell you without looking up the record.

Q. Will you please look it up?

A. Yes sir.

Q. Can you state from recollection whether he has been president practically ever since its organization?

A. I should say, practically ever since the lease. Do you wish the exact date?

Q. That is not material. "Practically ever since the lease" will answer.

Q. The pay-rolls of the C. B. & Q. Railroad Company were under your charge in the fall of 1901, were they?

A. October, 1901, yes sir.

Q. Under your general charge?

A. Yes sir.

Q. As were all the accounts?

A. Yes sir.

Q. That company had books, I presume, in which were entered, in some way or other, the name of every employé of the company; is that true?

A. Yes sir.

Q. And those books were under your general charge and supervision?

A. Yes sir.

Q. Do you know Mr. W. W. Baldwin?

A. I do.

Q. Who was he on the 15th day of October, 1901?

A. My recollection is that at that time he held the title of assistant to the president of the company.

397 Q. Assistant to the president of the railroad company?

A. That is my recollection.

Q. Was his office in Chicago?

A. His office was in Burlington.

Q. Who was Thomas M. Deering, at that time?

A. Mr. Deering was employed in the office of the president, I think.

Q. Of the C. B. & Q. Railroad Company?

A. Of the C. B. & Q. Railroad Company at that time. Or he may have been employed in the office of the vice-president, as he is now.

Q. Who was Mr. J. A. Connell?

A. He was an attorney in the employ of the company.
Q. And Mr. E. N. Sheldon?
A. The same as Mr. Connell.
Q. And Mr. Peaseley?
A. Mr. Peaseley was vice-president and treasurer of the C. B. & Q. Railroad Company.
Q. Are those gentlemen, who were named as the incorporators, and signed those articles of incorporation, (indicating Ex. 3), all of them now in the employ of the C. B. & Q. Railway Company?
A. All except Mr. Peaseley.
Q. Was Mr. Peaseley for any period after the organization of the C. B. & Q. Railway Company in its employ?
A. I believe not.
Q. What became of him?
A. He resigned.
Q. On the organization of the new company, his connection with the old company ceased, and he did not have any further connection with the new company, except to assist in its organization; is that right?
A. I cannot say positively when his resignation took effect.
Q. It was soon afterwards?
A. Soon afterwards.
398 Q. He is not now connected with either company?
A. No sir.
Q. Are either of these four persons I have named on the pay-rolls of the Burlington Railway Company at the present time?
A. Yes sir, they are.
Q. And also on the pay-rolls of the Burlington Railroad Company?
A. They are not.
Q. They were at the time they signed these articles of incorporation (indicating Ex. 3); and after the new company was organized, their connection with the C. B. & Q. Railroad Company ceased, and their connection with the new company has continued ever since?
A. They are employés of the new company, but whether they have any connection with the old company still, I do not know of my own knowledge.
Q. Would your books show?
A. No sir, my books would not show.
Q. I mean the books of the railroad company: You say they are under your charge now, such books as there are?
A. The official records of the board will probably show. They might possibly hold some position with that company.
Q. Does the old company have a pay-roll any more?
A. No sir.
Q. You say, Mr. Harris is the president of the Railway Company, and has been ever since its organization?
A. I said since about that time.
Q. And at the time of the organization of the new company he was president of the old company?
A. That is my recollection.

399 Q. And that the organization of the old company is still kept up?

A. So I understand.

Q. Now, who is president of the old company at the present time?

A. I don't know.

Q. Would you please ascertain?

Gen. HADLEY: Perhaps Judge Spencer knows and can say.

Judge SPENCER: I think it is Mr. Harris, but would not be certain.

Mr. LADD: Mr. Sturgis, please ascertain who are the president, vice-president, secretary and treasurer of the old company, if there are such officers, at the present time.

A. I will do so.

Q. How much of the authorized capital stock of the C. B. & Q. Railway Company, which is stated in these articles of association to be one hundred million dollars has ever been issued?

A. The books show ten thousand dollars.

At this point recess was taken until two o'clock P. M. of the same day.

400 WEDNESDAY, *Sept.* 19, 1906—2:00 p. m.

After recess on Wednesday, September 21, 1906, the following proceedings were had:

Mr. LADD:

Q. Did you get the information about the officers, Mr. Sturgis?

A. Yes, sir.

Q. What are the names?

A. Of the Chicago, Burlington & Quincy Railroad Company, George B. Harris is President; and Thomas S. Howland is Vice President, Secretary and Treasurer. Of the Chicago, Burlington & Quincy Railway Company, George B. Harris is President, Darius Miller is First Vice President, Daniel Willard is Second Vice President, Thomas S. Howland is Treasurer and Harry E. Jarvis is Secretary.

Q. You stated this morning that you had charge of such books as the C. B. & Q. Railroad Company had kept since the lease to the Railway Company, I believe?

A. Yes, sir.

Q. Now what is the nature of those books of the Railroad Company since that time?

A. They are a regular set of books, showing the bonds and stocks, cost of property and investments, rental receipts, payments made from that rental. They are a regular set of books.

Q. Is it such a set of books in every respect as the Railway Company keeps?

A. No, sir. One would be considered, to classify them, the books of a non-operating Company and the other as the books of an operating Company, in railroad distinction.

401 Q. Do the accounts for maintenance of equipment, for instance, accounts of earnings, accounts of expenses generally,

incurred in the operation of the road, appear now in the books of the C. B. & Q. Railroad Company?

A. No, sir, they do not.

Q. Now the reports made since the organization of the Railway Company, to the Board of Railroad & Warehouse Commissioners of the State of Missouri, and to the Board of Equalization of the State of Missouri, I understand have been made in the name of the Railroad Company: Am I right?

A. That is so in regard to the reports to the State Board of Railroad & Warehouse Commissioners. In regard to the other, I did not make them, and I cannot answer the question.

Q. As to the Railroad & Warehouse Commissioners, it has been made in the name of the Railroad Company?

A. Without exception.

Q. Those reports are in great detail, are they not?

A. Yes, sir.

Q. Have those reports been made under your supervision?

A. Yes, sir.

Q. From what reports did you obtain the information from which those reports to the State Board of Railroad & Warehouse Commissioners of the State of Missouri, from the Chicago, Burlington & Quincy Railroad Company have been compiled?

A. From the books of both the Burlington Railroad Company and the books of the Railway Company.

Q. I hold in my hand the original statement of the C. B. & Q. Railroad Company, made to the State Board of Railroad & Warehouse Commissioners of the State of Missouri, for the year
402 ending June 30, 1903: Was this prepared under your supervision, Mr. Sturgis? Would you like to look at it?

A. (After examining report.) Yes, sir.

Q. I notice two pages, devoted to operating expenses, under forty-six different heads, with amounts opposite most of them. From what books did you obtain the information to make this part of that report?

A. We obtained it from the books of the Burlington Railway Company.

Q. I notice one page of this report devoted to earnings from operation, under a number of heads, passenger, freight, etc: From what books did you obtain the information to make that part of this report?

A. (After examining report.) From the books of the Burlington Railway Company.

Mr. Ladd, may I say to you—it may perhaps shorten the matter, and is something which perhaps I should have said in answer to one of your questions awhile ago: Everything in that report that refers to the operating of the property, expenses and earnings, and items incident thereto, are taken from the Chicago, Burlington & Quincy Railway Company's books. Everything in regard to information contained therein referring to securities and cost of property, is taken from the Chicago, Burlington & Quincy Railroad

Company's books; except that the cost of property has a small item in it which was taken from the Railway Company's books.

Q. I have in my hands the report of the C. B. & Q. Railroad Company to the Board of Railroad & Warehouse Commissioners of the State of Missouri for the year ending June 30, 1905:
403 According to this the funded debt was $170,512,100. That, I presume, was correct wasn't it?

A. May I see the report?

Q. Certainly.

A. (After examining report.) That is correct.

Q. Is it the same now?

A. No, sir.

Q. Is the item of $7,178,487.36 which you testified this morning was a part of the $15,658,941.34, 20.24 per cent of which produces the item in your statement of $3,169,369.73 for rental, interest on that funded indebtedness you have just referred to?

A. It is the interest on the funded debt as of December 31, 1904, which is not necessarily the exact amount of the funded debt to which you have just called attention, in that report.

Q. You mean to say the- that the amount of the funded indebtedness did vary some from year to year but approximately, considering the magnitude of the figures, it was substantially the same, wasn't it?

A. Yes, sir, the interest figure was approximately the same.

Q. The funded indebtedness was right around the one hundred and seventy million mark all the time?

A. Yes, sir. I thought you asked about the interest.

Q. What is the funded indebtedness now, do you know?

A. Not off-hand, no. The books will show it, but I cannot remember it.

Q. Can you say whether it is more or less?
404 A. It is considerably more.

Q. Considerably more: How much more, approximately?

A. I should have to look at the books to answer.

Q. Will you do that?

A. For what time do you want that?

Q. At the time of this suit.

A. Will June 30th be satisfactory?

Q. Yes.

Mr. HAGERMAN: In that same connection, get the information for a few years, June 30th of each year.

Mr. LADD:

Q. Has the Railway Company ever issued any bonds secured by mortgage?

A. No, sir.

Q. I will call your attention to the item on page 1 of Exhibit 1, maintenance of equipment, $1,337,733.79: Have you included in those figures any sums of money which were not spent during the year 1904?

A. Yes.

Q. What?
A. $22,640.
Q. What is that for?
A. For equipment.
Q. "Equipment" is too general: I want more detail please.
A. Locomotives $13,720. Freight cars 3,520. Passenger cars 5,400.
Q. New locomotives, new freight cars and new passenger cars?
A. We might buy second-hand ones. If you mean whether it was in addition to those we already had, no. The idea is to replace those we have when we can buy them and when the
405 old ones go into the scrap pile.
Q. Has that money been expended?
A. No, sir.
Q. Now, Mr. Sturgis, what was your mileage in Missouri for the year 1904?
A. It is given at the head of page 1, Exhibit 1. We operated 1031.89 miles, June 30, 1904.
Q. What does that "Maintenance of equipment" account shown on that page 1 of Ex. 1, amount to per mile?
A. Approximately $1,300.
Q. What was the average cost per mile of your entire system during that period for maintenance of equipment?
A. I haven't the figure here.
Q. I will ask you what it was for the year ending June 30, 1904, according to your reports to the Board of Railroad & Warehouse Commissioners of Missouri?
A. (After examining report.) Approximately $1,020.
Q. Do you know what constitutes Group VI in the grouping of railroads made by the Interstate Commerce Commission, what States?
A. Group VI is made up of the States of Illinois, Wisconsin, Iowa, Minnesota, Missouri north of the Missouri River, the east half of South Dakota and about two-thirds of North Dakota.

Mr. HADLEY:

Q. All of the Burlington System is north of the Missouri River in Missouri?
A. Except Kansas City and St. Louis.
Q. All of the Burlington is in Group VI, is it not?
A. No, sir.
406 Q. I mean all in Missouri is in Group VI?
A. All in Missouri is in Group VI, yes, sir.

Mr. HAGERMAN: Even the part that is south of the River?

A. Yes. In fact I judge from the map here (indicating map in book) that is rather small, that both St. Louis and Kansas City are included in the group. The roads from the north into St. Louis would be entirely included in that Group, and the roads from the south would be included in another group.

The MASTER:

Q. So actually the Missouri River would not be the boundary line?

A. No sir, not actually.

Mr. LADD:

Q. What, according to the statistical report of the Interstate Commerce Commission, which I understand you have in your hands, was the average per mile of expense for maintenance of equipment of the railroads in group VI, for the fiscal year ending June 30, 1904?

Objected to by counsel for the Railroad as incompetent, irrelevant and immaterial, and also because the report of the Interstate Commerce Commission is not good evidence as against us. It is practically hearsay. There is no authentication of the correctness of it.

Mr. LADD: It is published by the Government, under authority of law, and the statistics have been prepared under the supervision of Government officers.

The MASTER: I will overrule the objection for the present.

407 A. The computation based upon the figures given by the Interstate Commerce Commission's report for the year ending June 30, 1904, shows approximately $900. a mile.

By the MASTER:

Q. For the railroads in that group?

A. Yes, sir.

Mr. LADD:

Q. The item on your statement of expenses for 1904, "maintenance of road and structures," $1,635,794.48: Have you included in those figures any sums which were not expended?

A. Yes, sir.

Q. What are they, please?

A. $157,834.

Q. How is that made up: If there are not many items can you give us the amount of the different items?

A. Kansas City bridge $100,000. Tools and machinery $11,999, and other road way, road buildings, track fastenings, water supply and telegraph 45,841.

Q. Were those moneys expended during that year?

A. No, sir.

Q. Have they been expended yet?

A. Some small part of them may have, but I believe——

Q. Were those charged to operating expenses on the books of the company, during that year?

A. Yes, sir.

Q. Charged in the account of operating expenses on your books for that year?

A. Charged in the account of operating expenses on the books.

Q. How much is your item $1,635,792.48 per mile in Missouri.

408 A. If you are going to ask for each one of these accounts, perhaps I would better send up and have them worked out on the machine. It will take me a good long while to work them out here. (After calculating) Approximately it is $1586.

Q. I will ask you what that account was for the year ending June 30, 1904, per mile, on the Burlington entire system?

A. I haven't that figure here, nor any means of working it out. I must correct my previous answer on the maintenance of equipment, because the classification which gives the footings on the Missouri report, is not the same in which we made the figures here (indicating report).

Q. I am asking for this statement here?

A. We have not on that statement anywhere the cost of maintenance of road and structures. I was going to take it from the Report to the Interstate Commerce Commission, but I cannot do it.

Mr. HAGERMAN: In your statement as you have it here, you ascertained that locally, without taking it for the entire system?

A. I took it for Missouri alone.

Mr. HADLEY:

Q. How is that apportioned to Missouri?

A. Actually for the State of Missouri.

Q. It is kept separately?

A. It does not appear on our books separately, as I explained to you, not for the operation figures, because the Division lines

409 and the State lines don't gee, and we had to work that up for this statement (indicating Exhibit 1).

Q. It is not on this statement you have made, for the entire system?

A. The maintenance of road & structures for the whole system, is not on that statement. (Ex. 1.)

Mr. LADD:

Q. Does not your report to the Board of Railroad & Warehouse Commissioners for the year ending June 30, 1904 (I believe that is the one we are going by) show your expenditures for maintenance of equipment on the entire system? Doesn't it purport to show it?

A. Yes, under a different classification. I will make my point clear to you: In this book——

Q. I don't think we need to waste the time on it.

Judge SPENCER: Let the witness explain it. He wants to show why he could not show it from this book.

A. For example, in the maintenance of equipment account under the interstate classification, which is the one used by the Missouri Commissioners in this printed form, the repairs on shop machinery and tools, which is one of the items, is classed under maintenance of equipment. In our classification which we use, it is grouped under maintenance of way and structures. That is an illustration.

The figures are where I can get at them, but I haven't them right here.

Q. You may ascertain that at your leisure.

Mr. HAGERMAN: That is not the only difference; that is simply an example of the difference.

410 Mr. LADD:

Q. Will you please look at the report of the Interstate Commerce Commission, which you have there, and state what it shows as the average expenditures per mile for maintenance of road and structures for the year ending June 30, 1904, for the railroads in Groups VI?

Mr. HAGERMAN: I want to make the same objection I made before, to this class of testimony, as incompetent, irrelevant and immaterial. The average cost has nothing to do with the actual cost to us. And anything prepared by an outside body in the way of statistics, like the Interstate Commerce Commission, is in no way binding upon us, and neither is it practical evidence, but is hearsay.

The MASTER: I am clearly of that view, but will admit the testimony because it may be helpful in the computations that may be made during the course of the trial.

Mr. HAGERMAN: We wish to be on record as clearly objecting to its going in.

The MASTER: I will say to counsel, that as an original proposition the objection should clearly be sustained, and I am admitting the testimony only because those figures may be useful in other computations that may be made.

Gen. HADLEY: On the question of admissibility we will also offer to show it is a report published in accordance with the provisions of an Act of Congress.

The MASTER: Show it.

411 Mr. HAGERMAN: If it is an Act of Congress it will show for itself. I have no objection to his reading from the book.

The MASTER: Of course the book is what it purports to be.

Mr. HAGERMAN: Yes, but whether the Act of Congress permits that to be offered as evidence in a certain case, depends upon the interpretation of the Act of Congress itself.

Mr. LADD: I should like to have it agreed that this volume we are talking about now is the 17th Annual Report on the Statistics of Railways in the United States for the year ending June 30, 1904, prepared by the statistician of the Interstate Commerce Commission, and published at Washington at the Public Printing Office, under date of 1905, as shown by the title page.

Mr. HAGERMAN: That is all right.

A. The answer to your question is, approximately $1011. per mile.

The MASTER: It may be, furthermore, here are certain figures that are published by a public body. It is barely possible that this evidence might be followed by other showing that the figures so published were derived from officials of this Railroad Company, which might constitute an admission of the Railroad Company. In

that event it might be competent evidence. But so far as I can now see it would not be. It might hereafter be competent evidence. I don't know. I shall admit the evidence for the present, at all events.

412 Mr. HAGERMAN: We have been inclined not to make any captious objections, but we thought that was an objection that should be made, if these figures were to be constantly used, so that they should be received subject to our objection. It seems to me the question of what the average is does not cut any figure as to what our expenses are.

The MASTER: As an original proposition I suppose it will hardly be contended by counsel for the State that the Complainants in this case would be bound by the figures of the Interstate Commerce Commission, unless they had part in the compiling of the Commission?

Mr. LADD: Yes, your Honor, I do, just as much as the Census Reports are evidence. They are prepared under authority of the Government.

The MASTER: When applied to a particular case?

Mr. LADD: Certainly, yes. Now I have not looked that question up, but that is my present impression.

Mr. HAGERMAN: The average per mile made up by the Hannibal & St. Joe, for instance, would be very different from the report made up by the Burlington, for instance.

The MASTER: The objection is overruled, and the testimony is admitted, and the question of its competency will be considered in due time.

413 Q. Mr. Sturgis, I understand, and should like to know whether I am correct, that the figures $1,525,158.92, shown near the top of the first page of your Exhibit 1, as receipts from local freights in 1904, are your actual earnings from that source?

A. They are.

Q. The item on page 2, designated as "Total receipts from all local freight business in Missouri, less diminution in revenue as above, $1,351,388.48, is the first item I refer to, reduced by the item on page 2, under the head of "diminution in revenue as above $173,770.44"?

A. Yes, and I thought in making up that statement it was plainly stated on here "Less diminution as above."

Q. I think this is pretty plain, but I wanted to be certain I was right.

On page 1, for the year 1905 your total earnings from local freight business are stated to be $1,649,665.73: on page 2 of Exhibit 1 it is stated in effect that if you had complied with the Act of 1905, your total diminution in revenue would have been $171,-122.07: Is that right?

A. In the State of Missouri, local, yes, sir.

Q. And that your total receipts from your local freight business would have been $1,478,543.66: Is that right?

A. That is correct.

Q. Now I will ask you if during the year 1905 you had charged on all the articles mentioned in the Act of 1905 the maximum rates

fixed by that Act, your diminution in revenue would not have
414 been several thousand dollars less than it is stated here?

Mr. HAGERMAN: Before that is answered, and without any extended argument, I want the Master to understand that we object to this testimony, on the ground that it is wholly immaterial under the law. This question as I read the application for a temporary injunction, was decided by the Court. In making this statement we do not have to charge up to the maximum rate fixed by the Act of 1905. I presume you followed what the witness said yesterday, that in making up this statement, it was made up on the basis of their charges as they were making them, being reduced to a certain extent, some being charged less than the maximum rate law fixed. The point I wish to make, for you to carry in mind now, is that we object to it as immaterial, and incompetent, and as being one of the questions covered by the Court in passing upon the application for a temporary injunction.

Mr. LADD:

Q. Have you the figures showing what the diminution in your revenue would have been for that year, if you had charged the maximum rate on all articles as fixed by the Act of 1905?

A. I have not, but I have arranged to have them made up.

Q. I understand that it appears from your books that the diminution in revenue would have been $44,522.46 less than you state in this Exhibit 1. That is to say, that your diminution in revenue, if you had charged the prices you were allowed to charge by
415 the Act of 1905, on all the articles, instead of being $171,-122.07, as shown on page 2 of Exhibit 1, would only have been $126,599.61, or thereabouts?

A. May I ask you what figure you quoted yesterday for the previous year, 1904 say?

Q. $71,197.

A. I have no reason to question the correctness of either one of those two figures, which I understand were made up by the expert from the working sheets.

Q. You will satisfy yourself about that, please.

A. Yes, sir. It will take some little time to get them up.

Q. I wish you would look at the item on page 1 of your statement for the year 1905, receipts for interstate freight $6,735,454.71: that is the part of the receipts which you give the Missouri part of the system credit for, inter-state receipts?

A. Yes, sir, I supposed that was explained yesterday.

Q. You did explain it in regard to the item for 1904. And that, I understand, is arrived at on a mileage basis?

A. Yes, sir, but the two years are made up on necessarily the same basis all the way through.

Mr. HAGERMAN: That is to say, your statement in that regard for 1905 was gotten up just as it was for 1904?

A. Yes, sir, the same principle was applied in each case.

Mr. LADD: Take that item on page 1 of Exhibit 1, for mail,

express etc., the total being $1,169,165.01: Did I call attention to that yesterday?

416 Mr. HAGERMAN: You did as to 1904?

Mr. LADD:

Q. Are the same kind of items included in that amount as to the similar item for 1904?

A. Yes, sir.

Q. How much of that, then, is for switching?

A. $126,705.78.

Q. That switching was done in the State of Missouri, was it?

A. Yes, sir.

Q. What was switched?

A. Practically all of it was for the switching of freight cars. There may have been, and probably was some small amount for the switching of passenger cars.

Q. You don't very often switch passenger cars for other roads, do you?

A. In some cases we may do it for other roads, or for individuals. If you had a special car rented from the Pullman Company, we might charge you for the switching of it, and might not.

Q. But as I understand you, practically all of it was for the switching of freight cars?

A. Yes, sir.

Mr. HAGERMAN:

Q. That $126,705.78 for 1905 switching, you did not have any division of that as between State and Inter-state, did you?

A. No, sir, we considered that on the local, only. There is a division of it. It enters into the local for the State.

Q. What I mean is, was it cars in interstate shipments or local shipments?

417 A. No, sir, I have not made any division of it.

Mr. HAGERMAN: That is what I understood you to say about 1904.

Mr. LADD:

Q. Which figure have you it in, the $615,582.26 or the $553,582.75, under the head of mail, express, etc.?

A. It is entirely in the local figure, $553,582.75.

Mr. HAGERMAN: That is in 1905: What about 1904?

A. In that case the corresponding amount, that is, the switching amount, is all in the local miscellaneous earnings.

Mr. LADD:

Q. Why should not that be credited to the earnings for transportation of freight in this State?

A. Because in the first place that is not transportation of freight, as accepted by any authority I have ever heard of.

Q. I don't care anything about the authorities: I want to know if it is the movement of freight by your Company in this State, as a matter of fact?

A. Under your interpretation it would be necessary to divide that, and a very small portion of it would go to the local freight earnings of the State.

Q. Now will you please answer my question—you do very promptly usually, but you have not this time: I ask you if that is not the movement of freight by your System in this State?

A. Not entirely, nor probably not much more, if as much, as half the time.

Q. What is it about the other half of the time?

418 A. The greater part of the movement would be the movement of the car, rather than the freight.

Q. You said half the time: Is that your approximation?

A. If they are half empty and half loaded cars, equally, they would be half and half. Just what would be charged for and what not, I cannot state. There are a great many switching movements not charged for at all. The expense of switching is all out of proportion to the amount collected.

Q. There is $126,705 included for switching, which you earned for switching, included in the $553,582.75, under the head of Mail, express, etc.: That is right, is it?

A. Provided it is a miscellaneous earning, it is one way of putting it there.

Q. It is included in this statement of $553,582.75?

A. It is in that statement.

Q. You say half of that is for moving freight?

A. It would be the wildest kind of a guess.

Q. Didn't you say something about half, awhile ago?

A. I said "probably half." As a guess, it would be approximately half.

Q. Then why should not half of that be credited to local freight earnings?

A. Because probably not one-tenth, if as much as that, of that one-half would be on intra-state freight shipments.

Q. Then why not credit it all between local freight earnings and inter-state?

419 A. In my judgment it does not belong to local freight earnings.

Q. Although it is actually the movement of freight by your System in this State, for which you get compensation, you say it does not belong to the freight earnings?

A. There are various charges connected with freight earnings——

Q. Although you say it is something you receive for moving the freight on your System in this State, yet it does not belong to freight earnings?

A. I say it does not belong to freight earnings.

Q. And you have not put it into freight earnings?

A. We have not put it into freight earnings, because it does not belong to it.

Judge SPENCER: You said something about the expense of doing that.

A. Neither are the expenses in the freight.

The MASTER:

Q. How would the expenses and receipts compare, in respect of that item?

A. The expenses of switching, cost of switching, is far in excess of any receipts from that source.

Q. Then there would be no net revenue from that source?

A. Not net revenue, but a large net loss.

Gen. HADLEY:

Q. Where are the expenses of doing that switch service charged?

A. You must remember that——

Q. Where are they charged?

Mr. HAGERMAN: Let the witness answer the way he wants to.

420 A. They are left out of the figures on here (indicating) because the only expenses we have computed for local earnings are expenses on local freight; and as we have not included them in the local freight earnings, we have not included them in the local freight expenses.

Judge SPENCER:

Q. And they are a much greater expense?

A. Very decidedly.

Gen. HADLEY:

Q. Aren't they included in the total expense of conducting transportation for the Company?

A. As a broad question?

Q. Yes, as a broad question.

A. Certainly.

Q. That is, the equipment with which you move freight is an equipment expense, maintaining which is charged against the earnings of the Company?

A. On the broad question, yes. Let me make that plain to you: You have forgotten one link. You remember we get the expenses of the earnings on local business by applying a per cent that the expenses are of the total earnings in Missouri. Now, therefore, if you take the local freight earnings in Missouri, without the switching, and apply the per cent, you have not included in that expense item any cost of the switching.

Q. Why not?

A. Because you would have to take the per cent of the switching earnings in order to do it, under that principle of computation.

Q. You took a percentage of the entire cost of transporta-

421 tion?

A. That has nothing to do with it.

Q. You took three-sevenths of the entire expense in 1904, amounting to $10,887,290. and that included the cost of the switching?

A. Now you are mixed again. That three-sevenths calculation does not enter into this statement at all.

Q. I mean, you take a percentage three times of the local business?

A. There are no figures on the statement we are talking about that shows that.

Q. I mean the figures you gave yesterday, when you took a certain proportion three times of the local business, to the total business for 1904?

A. By bringing that three times in you are simply clouding the result. Let us go back to the first principle, where we took a percentage which was eighty-nine per cent, in round numbers, as the per cent of the local earnings. Look on page 2 and you will find an item there of expense local freight business in Missouri, computed upon the same basis as the total expenses were, $1,288,031.79. That is found by applying the percentage eighty-eight and a fraction per cent to the earnings on the local freight business. Now that is the expense proportion on freight business only, and this is freight earnings. Now if you are going to include the switching earnings, then you must include the eighty-nine per cent of these earnings in the same way, in order to get at the expense. This
422 whole point, so far as switching goes, is a matter of a very few dollars. If your contention of putting that in as freight is carried out, you first must divide the switching on inter-state from the switching on strictly intra-state business. That of itself leaves you a comparatively small figure. Then after you have got that, you have got to treat as expense eighty-eight per cent, or if we leave out the fixed charges, say sixty-one per cent of that figure. So the net left in here would be only a matter of a few thousand dollars, and if you come to put against that the actual cost of the switching as compared with the revenue, which is ever so many times greater, it would throw it on the other side. It would be to our advantage to put that in there if it could be properly done. But there is no authority for doing it. Switching earnings are miscellaneous earnings.

Q. Where have you charged the expense of doing the switching?

A. Where have we charged the expense of doing the passenger business?

Q. Answer my question: Where have you charged the expense of doing the switching?

A. On this statement?

Q. Yes.

A. We have not shown it on the statement, and more than we have shown the expense of doing the local passenger business. The only local computation of business is as to freight. The rest is simply ignored.

Q. Does not the item "Conducting transportation" for
423 1904 include items that were incurred by reason of doing the switching and handling of passenger cars?

A. Yes, certainly, but that is for the whole of Missouri.

Q. Not for the whole of Missouri?

A. The figure you quote is for the whole of Missouri. Now we have taken only the freight portion of that figure.

Q. You took a portion of the sum of the total expenses, being $10,887,290; you take of that a certain per cent upon your theory of calculation yesterday, which gave you $3,124,652. as the expense of conducting the State freight business: Is that correct?

A. You have gone into the three times again. That is a secondary calculation. It is a right one, but it complicates your question. We take a portion of that ten millions to which you refer, which is the total expenses of the State, but we take the freight proportion.

Q. I say, you take a percentage of that ten millions, which is the total expenses, in order to get, according to your theory, the expense of doing the State freight business?

A. Yes, sir, the State freight business.

Q. Now, the amount that remained was the expense of doing what business?

A. The amount that remained was the expense of doing the passenger and miscellaneous business.

Q. How about the inter-state freight business?

A. I am talking from the local entirely. We set aside a certain portion of the expenses that were local. We estimated
424 our local for freight, and the rest of the local expenses, which are not shown here in any figure, would cover miscellaneous passenger and local earnings.

Q. Where are the rest of the passenger earnings?

A. Multiply this $10,288,290.67 shown here, by your per cent of all expenses to earnings, and you get a total sum; deduct from that the expenses of freight, as shown on this second sheet, and you will have a figure that represents the expense of doing the local miscellaneous and passenger business.

Q. Would it come out of the $3,124,652., or out of the sum resulting after the deduction of that from the ten millions?

A. It would come out of the sum after deducting that from the ten millions, if I understand your question.

Q. Then the expense of doing switching is not apportioned to State and Inter-state business, in your expense account?

A. Not here in this statement. Exhibit 1, nor on our books.

Q. But in your earnings account the income from switching is all charged in the miscellaneous local account?

A. It is all credited to the miscellaneous local business.

Q. Yes, I meant credited.

Judge SPENCER: Did I understand you correctly, Mr. Sturgis, in that connection: That the expense of doing this switching
425 business does not enter into your calculation, and neither does the revenue therefrom, on local business?

A. As shown in the statement Exhibit 1, no, sir; neither expense nor revenue.

Q. But if it did, the expense would exceed the revenue?

A. By very much.

At this point, by consent of counsel the Master adjourned the further hearing of testimony herein, until tomorrow, Thursday, September 20, 1906, at ten o'clock in the forenoon, then to be resumed at the same place.

426 CHICAGO, ILL., THURSDAY, *Sept.* 20, 1906,
10:00 o'clock a. m.

Parties met, pursuant to above adjournment, when the following proceedings were had:

Cross-examination of Mr. CHARLES STURGIS continued, as follows, by Mr. LADD:

Q. I am not certain whether I have asked this question or not, but if I have, Mr. Sturgis will remember it:

I think you stated yesterday, Mr. Sturgis, that in the item of expense for 1905 for maintenance of road and structure $1,750,867.36, as shown on page 1 of Exhibit 1, there was included the sum of $570,918.75, and it was designated in a general way, as "Replacement Fund." That included the $550,000 for the Kansas City bridge, and $20,918.75 for shop tools, and some other things.

A. That is the figure that is included there. I can't know whether I gave the figures yesterday or not.

Q. Your mileage that year, 1905, was, in round numbers, 1142 miles?

A. Mileage of what?

Q. Of the Missouri part of the system. To be exact it was 1141.79: That is right, isn't it?

A. That is correct.

Q. How much is that an average per mile, for maintenance of road and structures?

A. If you want me to figure out all these different computations, if you have them I would much rather turn them over to a clerk to do it. My time is pretty valuable to be doing these things. I spent a great deal of time yesterday figuring out things that ordinarily we have done by a clerk.

427 Q. It is not for you to object, or me to command. I simply ask you, are you willing to take this item and divide it by 1142?

A. There is not the slightest objection to doing it for one or two figures, but I thought I spent a great deal of time yesterday in doing things that ordinarily we have a clerk do, and if you have the figures I could send them upstairs and have them verified.

Q. My memorandum shows it approximately.

A. (After calculating.) In even dollars it is $1,534.

Q. Can you tell, Mr. Sturgis, what was the average per mile for the maintenance of road and structures for the whole Burlington system for the year 1905?

A. The year ending June 30, 1905, I have not that figure.

Q. Here is what is supposed to be a synopsis, in the report of your company for that year. (Handing to witness report to railroad commissioners.)

A. Do you want me to read these figures here?

Q. I want to know what the general average is, if you are willing to accept these figures as correct.

A. Not without figuring it over, no sir. Presumably it is correct. This report (indicating report to railroad commissioners) covers a

different period from the one we are working on here. (Indicating company's report.) This, (indicating) is for 1905, and that (indicating) is for 1904. The figures are made up on a different basis.

Q. Will you, at your convenience, please ascertain and tell us what the average per mile was of the Burlington
428 accounts for maintenance of way and structures for the year ending June 30th, 1905?

A. Yes sir. May I ask if you will let me know what other computations of this kind you want, and I will send a memorandum upstairs and have my clerks look them up while we are proceeding. What else do you want.

Q. I cannot tell you at this instant. But I can ask you about another thing now that you may want to look at you- books for.

I understand that you charged to operating expenses for the year 1905, in the form or under the head of "Replacement Fund"—at least we will call it that to designate it—the sum of $550,000 for the Kansas City Bridge, which has not yet been expended, any part of it.

A. That is correct.

Q. I wish you would ascertain at what time in the year that charge was made on your books?

A. That charge was made on the 30th day of June, 1905, according to the best of my recollection. As of that date, you understand. Just what date it was made, I don't know.

Q. Was it made subsequent to that?

A. It goes on to the books as of that date, so it goes into that year's figures.

Q. Was it actually made prior to or subsequent to that date?

A. In all probability, subsequent. Those were all our June figures, which go on to the books in June, although made in July or August. That is done so as to get into the books for the fiscal year ending June 30th.

429 Q. I wish you would examine your books and state later if you will be kind enough to do so, what the total operating expenses of the entire Burlington System—what the per centage of total operating expenses to total earnings of the entire Burlington System, was, for the year ending June 30, 1901, June 30, 1902, June 30, 1903, June 30, 1904, and June 30, 1905; and exclude, if you please, if your computations, any charge for what is in your statement here, ex. 1 designated as "Rental"?

A. Do you wish the taxes included?

Q. You may include the taxes or not, but I should like to know it if they are included.

A. We do not ordinarily include them.

Q. You may state what the taxes were, at the same time, so we can take them into consideration?

A. Very well.

The MASTER: The question calls for the more percentage or relation: Wouldn't it be just as convenient to give both the figure and the percentage?

Mr. LADD: Certainly.

The MASTER: I make the further suggestion that that computation be made out in the form of a statement and filed as an exhibit.

Mr. LADD: Certainly.

Q. Can you give me any figures, Mr. Sturgis, as to the operation of the company for the year ending June 30, 1906, by reference to your books?

A. I have not any figures in final shape to give that. Our reports are not yet made up for that year.

Q. I find in the Commercial Financial Chronicle, pub-
430 lished in New York, under date of Sept. 1st, 1906, what purports to be a condensed statement of the report of the Burlington Railway Company for the year ending June 30th, 1906. I am reading now from the paper which I will show you, "as shown by the recent statement to the New York Stock Exchange." Please look at that?

A. (After examining paper:) We furnished to the New York Stock Exchange, not as a published report, or a report for publication, certain figures in advance, which are called for by them, under their regular custom requiring statements before they listed issues of bonds. They were new bonds——

Q. Let me interrupt you. Judge Spencer says he thinks that report will be in print before we get through this hearing, so we will not spend another moment on it.

Judge SPENCER: I do not mean this hearing here, but before we close the evidence.

Mr. LADD:

Q. In your testimony yesterday, or the day before, Mr. Sturgis, you stated that the expense of doing the local freight business, according to your estimate, was three times as great as doing the other business. I don't know whether you meant all other business, but I don't care. And that upon that computation the expense for the year 1904 was $3,124,652.42 to earn $1,773,263.94.

The MASTER: Are you referring for those figures to any part of Ex. 1?

Mr. LADD: I am referring to page 2 of Ex. 1 for the figure $1,-352,388.48 but for the rest of it, it refers to his testimony.

431 That is a correct statement of your testimony, isn't it?

A. At least three times, I said. And that earnings figure is after the deduction of the diminution of $173,000 for the year 1904. Those figures are correct.

Q. Now in the computation by which you reached that result you included the local freights proportion, didn't you, of the item of expenses designated on page 1 of your Ex. 1, as "proportion of rental," amounting in the aggregate to $3,169,369.73 and the item of taxes, amounting to $188,751.46?

A. Yes sir.

Q. That item proportion of rental, shown on this exhibit as $3,169,369.73 is a certain proportion of another total, $15,658,-941.34, applicable to the system as a whole, isn't it?

A. That is correct.

Q. The figures contained in this statement for the proportion of rental, $3,169,369.73, are arrived at by taking 20.24 per cent of the fifteen million dollar item, weren't they?

A. Yes sir.

Q. And the 20.24 per cent is the ratio between the earnings of the system in Missouri, and the total earnings of the entire system?

A. That is my recollection.

Q. Now, that item of $15,658,941.34 was, as you have stated, I believe, made up of the interest on the bonds amounting in round numbers to $170,000,000——

A. Approximately.

Q. And sinking fund payments, amounting to about $721,000,000——

A. Correct.

Q. And dividends on about $110,000,000 of Chicago, Burlington & Quincy stock, at 7 per cent per annum, amounting to $7,758,737; is that right?

432

A. Correct.

Q. I want to ask you now if you think it is fair to charge the local freight earnings with three times as much of the interest on bonds, and the sinking fund payments and to dividends on the stock, as you charge to the other earnings of the company in Missouri?

A. I certainly do.

Q. You do?

A. Yes sir.

Q. I will ask you now if the interest on the bonds is made any more or any less by the fact that you do a local freight business in the State of Missouri?

A. It does not raise the rate of interest, or raise the amount that the interest figured at any particular rate will give.

Q. It does not?

A. No sir.

Q. So the amount you have to pay for the interest on the bonds is not increased by the fact that you do a local business in Missouri, as well as an interstate business: I will ask you now if the sinking fund payments are increased by the fact that you do a local freight business in the State of Missouri?

A. I do not think that question is capable of being answered yes or no, in the way you put it.

Q. Is the item of $721,716.98, which, as I understand you is a fund set apart as a sinking fund, in anticipation of payment of outstanding bonds, increased to any extent by the fact that in the year 1904 you were doing a local freight business in the state of Missouri?

433

A. I must repeat the same thing. If we did no local freight business, it would not affect those payments; and if we did all local freight business, it would not affect those payments. That is, based entirely on the apportionment of payment of the two classes of business.

Q. I will ask you if the amount resulting from the amount of dividends at 7 per cent on the $110,000,000 capital stock of the

Burlington railroad company is increased to any extent by the fact that you do a local freight business in the State of Missouri?

A. If we did not do any local freight business in the State of Missouri, I do not believe that payment would be nearly so large. In fact, I am very sure it would not. If I may explain my position——

Q. Just wait a moment. The lease here to the railway company by its terms provides that the railway company shall pay to the railroad company an amount equal to 7 per cent upon the capital stock of the railroad company: was that burden, which was undertaken in the year 1901, and which had been sustained during the year 1904 and every year during the period of the lease, increased to any extent in 1904, or made any different from the fact that in 1904 you were doing a local freight business in the State of Missouri?

A. The apportionment of the amount to local freight business is very considerably affected.

Q. You have charged, as a part of the expenses, these extraordinary expenses which you say are incurred for doing the local
434 freight business, over and above the other business of the company in the state, you have charged the same extraordinary proportion of the local freight business of these items of interest on bonds, sinking fund payments, and dividends, as you have of the actual operating expenses necessary to earn those local freight earnings: That is, you charge for the engineers' wages, the firemen's wages, and so on?

A. I think they follow very closely.

Q. You think that is right?

A. Yes sir.

Q. In answer to Judge Spencer, he gave it in the alternative, this amount Mr. Ladd was asking for, and then with this eliminated, if the court should think it should be eliminated?

A. Yes sir.

The MASTER:

Q. Exhibit 1 does not present the matter alternatively, does it?

Mr. HAGERMANN: No sir, it simply leaves it blank, as a matter of calculation, because that per cent must be ascertained by expert testimony, and we could not fill it in at that time. The last thing on Ex. 1 is a blank "Increased cost of Expenses."

Questions by Gen. HADLEY:

Q. Mr. Sturgis, have you figured out what would be the cost of conducting state freight business if you had adopted the theory that it costs seven times as much proportionately to carry on that traffic, as it does to carry on the other traffic in the state?

A. No sir, I have not.

435 Q. What would be the percentage of the higher cost of operating the system, which in 1904 amounted to over $10,000,000, in case you did adopt the seven times theory?

A. It would not affect it at all as you will appreciate if you will recall the statement I made on the first day of the testimony, show-

ing how that was arrived at proportionately, where we took for example 20 per cent to represent the local freight earnings, 20 per cent of the total earnings.

Q. Total earnings, or total freight earnings?

A. Total freight earnings. The local freight earnings being 20 per cent of the total earnings.

Q. Of the total earnings, or the total freight earnings?

A. In the case I used the 20 per cent it was purely suppositious for the purpose of illustrating a point.

Q. I understand it was a hypothetical case, but I ask you if in the suppositious case, you took 20 per cent as representing the local freight earnings, and 80 per cent as representing all the other earnings of the railroad, or did you take the 80 per cent as representing the intra-state earnings?

A. I do not recall which I took.

Q. What do you take?

A. We will take it supposedly for all the earnings.

Q. Do you take that in your theory, in your computation, that it cost over $3,000,000 to conduct your state traffic in 1904? Do you take a percentage of the earnings upon state rates as compared with the earnings upon all classes of business.

A. That is the step we took in determining the expense on
436 the local freight. We could have gone around through the freight, but the result would have been exactly the same.

Q. If I understand you correctly, you say it made it no greater in handling the local freight, if you take seven times instead of three times?

A. You remember the calculation which was made at some length, where I took 20 and multiplied it by 3.

Q. By 3?

A. Well, multiplied by 7. When you multiply by 7 you get 14, or 140. You have 80 already set aside for the other. Adding 6, that makes, altogether 22. 8/22 as the cost of the through business, and 14/22nds as the cost of the local business.

Q. That figures, then, that the cost of doing the local business would be 7/11ths, would it?

A. Yes sir, that is what it figures.

Q. Instead of 3/7ths?

A. Instead of 3/7ths. If it is three times. For three times, it is 3/7ths, and the other way it is 7/11ths.

Q. Is 3/7ths a greater portion of an integer than 7/11ths?

A. Considerably less.

Q. It would cost considerably more at 7 times than at 3 times?

A. For the total expense of all state business?

Q. No, the total for conducting the local freight business?

A. Certainly.

Q. Have you figured it out, and if you have not, will you figure it out, on the seven times basis?

A. Certainly, I will have it figured out. It is quite a calculation, and takes some little time.

Q. I say, will you do it?

A. Yes sir.

437 Q. In the calculation you have made for Judge Spencer, why do you take three instead of seven?

A. Because I was asked to, as that was the minimum, in my judgment.

Q. That was the minimum?

A. Yes sir, in my judgment.

Q. What I want to get at is, was it the minimum, or was it your judgment?

Mr. HEGERMANN: If our testimony supports that, that is sufficient for the purposes of this case.

A. My judgment was, 3 to 7 times, and we took the minimum, three being the least.

The MASTER: What a moment, please: Let me see if I understand what that three fold ratio means: I understand the witness to give it as his opinion and his judgment, based upon his professional experience and observation, that the cost of conducting local freight transportation in the State of Missouri, for the years now under investigation, will be three times as great as for the cost of conducting all freight business, both local and inter-state, in the State of Missouri for the same period of time: Is that right or not?

Gen. HADLEY: I don't know. I was just going to examine to see if I understood him correctly or not.

A. No sir, it is not right, because as I understand your remarks, your Honor, you imply that doing the local business, which is only one twentieth or less of the other, is going to cost three times as much as doing the 80 or larger per cent of the whole.

The MASTER: I stand corrected, and will put the question differently.

Is the cost of earning a net dollar of income three times
438 as great, in your judgment?

A. Yes.

Gen. HADLEY: As earning what?

The MASTER: As earning a dollar by the transportation of all freight in the State of Missouri for the same period of time?

A. As I understand his Honor's statement that is my view.

Gen. HADLEY:

Q. Do you mean to say, then, that in your opinion the cost of earning one dollar in revenue in the State freight business, or in handling state freight, is three to seven times as much as the earning of a dollar in the handling of interstate freight?

A. That I understand, to be my position.

Q. You don't mean to say that the cost of earning a dollar in revenue in the handling of state freight traffic is three to seven times as much as the earning of a dollar in revenue in the handling of all the traffic of the railway.

A. Your statement is exactly the same.

Q. In one case I put in interstate traffic, and the other I put all the traffic in the state, as the basis of comparison.

The MASTER: That is just what I was trying to get at. What is

that three fold ratio? Is it three times the cost of earning a dollar on all the business in the state, or simply three times the cost of earning a dollar by the transportation of interstate freight alone?

A. No sir, on all business in the state.

Mr. LADD:

Q. By that you mean freight business?

A. Yes.

Gen. HADLEY:

439 Q. On all of the freight business of the State?

A. Yes.

Q. You do not count in passenger business and miscellaneous earnings, in your computation?

A. Not necessarily. Primarily freight was what we were talking about when I gave that testimony. I haven't it figured out on the passenger. I should hardly think the proportion would hold on passenger, but it might.

Q. In the bill filed in this case, and the application filed with reference to that feature of it, I find the following: "The cost of doing the business local to the State of Missouri is at least three times the average cost and expense of transporting the entire traffic within the state": If I understand you correctly, you have not made and do not offer now any computation upon that theory?

A. I have not any computation on either theory. As I understand it, this is simply an expression of opinion.

Q. Then you have not expressed any opinion on the statement in the bill?

A. I think that is a fair statement.

Q. You have not figured it out, if I understand you correctly, as you have given figures based on the theory that it costs three times as much to earn one dollar in local or freight business, as it does to earn one dollar in all freight business of the State?

A. We have figured that out.

Q. What do you mean when you use the expression "local freight business?"

A. I mean intra-state business.

Q. What does the work "local freight" mean in railroad parlance?

A. Ordinarily, local freight means freight that does not

440 pass between two large terminals.

Q. Does it mean freight in less than car-load lots?

A. Necessarily, no. It also includes freight in car-load lots. In other words, freight in car-load lots may be local freight.

Q. And it may be interstate?

A. Usually interstate freight is contained in car-load lots.

Q. And less than car-load lots?

A. Much interstate is done in less than car-load lots.

Q. Would a car-load of freight, originating on the line of the Burlington road at Denver, and ending on the line of the Burlington at Hannibal, be local freight?

A. It would be interstate.

Q. Wouldn't it also be local, because it would begin and end on the line of the Burlington road?

A. So far as beginning on the line of the Burlington in Denver, that would not, in my idea of the distinction, make it local. The fact that it ended at Hannibal might, or might not. We don't make the distinction between local and through freight in any of our figures. The regular distinction understood throughout the country, I don't know. The exact distinction I do not remember, and I did not interest myself in it, because we do not use it.

Q. You have two classes of freight business on the Burlington system?

A. Yes sir.

Judge SPENCER: As we have used the term "local freight" I understand that we mean freight originating and ending in the State of Missouri?

441 The WITNESS: That is the way I have used this term here.

Gen. HADLEY: I want to get the word defined.

The MASTER: It has been my understanding all the while, that when the word "local" was applied to freight, it was to contra-distinguish that sort of freight from freight that was interstate.

A. Local to the State of Missouri.

Q. That is freight that has its origin and destination in the State of Missouri?

A. Yes sir.

Mr. HAGERMANN: That is the theory on which the statement is gotten up.

Gen. HADLEY: I understood that, but I did not know whether the witness understood the use of the wor*k* "local" as used in railroad *b*arlance, or as used here.

Mr. HAGERMANN: That was expressly understood before the witness began to testify. Gen. Hadley wanted some term used, and the witness explained how he was using that term.

The MASTER: We understand it now, at all events.

Gen. HADLEY:

Q. What is a local freight train?

A. A local freight train is a train that starts out initially on the road and does a business locally from station to station, or to some intermediate station; in contra-distinction to a through train, which goes through from one terminus to another.

Q. Are you familiar with the freight division upon the Burlington systems in Missouri?

A. Freight divisions?

Q. Yes?

A. What do — mean by freight division?

Q. Don't you know what the term "freight division" means?

442 A. No sir.

Q. Is there a certain point from which a freight train runs, and then loses its identity at some other point on the road?

A. Yes, undoubtedly.

Q. Don't you have a division beginning at St. Louis and ending at Hannibal?

A. We have an operating division that includes that territory. I could not tell you personally whether they consider that the end of a freight run or not.

Q. You call it an operating division?

A. Operating divisions do not confine themselves to a particular piece of main line. They cover a territory rather than a particular piece of track. They cover all the track in that territory.

Q. Certainly. I understand that. But the division begins at one station, and ends at another?

A. Well, yes, for instance, we have a division that begins at Aurora, 39 miles out of Chicago, and runs to Ottumwa, Iowa. But a freight train starting out from Chicago, under a particular number may keep that number all the way through to the Missouri River on the western boundary of Iowa.

Q. But a local freight train might start at Quincy, Ill., and end at Brookfield, mightn't it?

A. It might very well.

Q. In other words, the point I am trying to make clear by my question and upon which I think there is no confusion, is that a local freight does not have the same significance as local freight in the meaning that you have given it in that case.

A. You are perfectly right in this case. The meaning we have given to "local freight" in this case is intra-state freight.

443 Now, the local trains are not confined to hauling intra-state freight. Nor is the hauling of intra-state freight confined to local trains.

Q. And is not the converse true, that what you call "through freight" trains are not confined to either local freight meaning state freight, or interstate freight?

A. That is correct.

Q. That is, a through freight might carry nothing but state freight?

A. Yes sir, there might be a particular train of it. It would be rather unusual.

Q. Or, a local or through freight might carry nothing but inter-state freight.

A. That is also possible.

Q. And a local freight train might carry nothing but interstate freight? I mean, a local freight train operated all or partly in Missouri, might carry nothing but inter-state freight?

A. That would be extremely unusual.

Q. But as a usual proposition, through freight and local freight trains carry both classes of freight?

A. Yes sir, in varying proportions.

Q. I noticed in the testimony you gave on the first day of your examination upon this point that you testified in one instance that in your opinion the cost of doing the local or intra-state business would vary anyway from three to seven times as much proportionate

to the earnings as doing all the business of the state. At another place, when you were asked by the Master what you meant by
444 all other business, you said "I am talking particularly about freight business", but you didn't say whether you were referring particularly to state business, or whether you also desired to compare the cost of doing that business with all the business in the state, or all the freight business in the state: Do you wish to make any correction of that apparent contradiction?

A. I don't think there is any contradiction there when you consider the manner of arriving at the cost of doing the local business. The computation is based on per cents that apply equally to all the business, or to the total freight business, and is taken and applied to the local freight business.

Q. And you think it would make no difference to the result of the computation whether you figured the cost of doing the state freight business at three times as much proportionately as the doing of all the other business of the road; or whether you took it as three times as much proportionately as doing all the freight business of the road?

A. If it were possible to ascertain the actual figures, you would probably find some variation in it. I think the first statement I made on that first or second day, when I explained that three to seven times, was a full and complete statement, and is one I have had in mind ever since, and which carries out my belief. Of course, when you say "three to seven times as much" there is a big margin. We have not the exact figures and have no way of telling the exact figures. This is judgment, based on experience and general
445 knowledge, and it was so stated.

Q. Have you the records of your office by which you could ascertain the tonnage of the business done by your road in handling the freight in the state of Missouri in 1904?

A. The total freight of the State of Missouri?

Q. Yes? The total tonnage?

A. Yes sir.

Q. Both state and interstate?

A. I think you can get that for one of those years for the total business, though I am not absolutely certain.

Q. For which year?

A. My recollection is, 1905.

Mr. LADD:

Q. If you can do that, can you separate the intra-state tonnage, from the interstate tonnage?

A. That would be a tremendous undertaking.

Q. It could be done.

A. Yes sir, it could be.

Gen. HADLEY:

Q. Of course, if you had that, then you could get the total number of ton miles of transportation, during that period?

A. That would be an additional calculation.

Q. But I say, having the first two, you could get the latter?
A. If we could get one, we could get the latter.

The MASTER: What is meant by the term "ton miles," Mr. Hadley?

Gen. HADLEY: Miles that a ton of stuff was hauled, or the average tons per mile.

Q. What is a ton mile, as you used it?

Gen. HADLEY: A ton mile would be a ton of freight hauled one mile. Am I correct, Mr. Sturgis?

446 The WITNESS: If ten tons are hauled 100 miles, it makes 1000 tons miles.

Q. I have your figures here, Mr. Sturgis, upon your basis of apportionment upon the three times theory, as distinguished from what Judge Spencer has called the single cost theory; in which of the $10,887,290 of expenses in 1904 you apportioned $3,124,652 as the expense of handling the state freight business; then what did the remaining part of that amount, namely, $7,762,638 cover as expenses?

A. It covered the expense of doing all other business of Missouri.

Q. Then the expense of hauling the local passenger business, interstate passenger business, local miscellaneous business, and interstate miscellaneous business, and interstate freight business, are all included by your calculation in the amount $7,762,638?

A. So I understand.

Q. Now, excluding the rentals and taxes from your computation, can you give me what would be, on the basis of your calculation, the expense of handling the state freight business in 1904?

A. That figure has already been given in previous testimony, and figured at $2,517,356.43, which includes no part of the taxes or of the rentals. Neither once nor three times.

Q. I have it in your testimony given on Tuesday, in figuring upon that basis in answer to the question of Judge Spencer "what is the cost of the local business on that basis?" you answered, "the cost of the local business upon that basis is $2,160,871;

447 aren't you confused in your figures?

A. What was Judge Spencer's question?

Q. Judge Spencer's question was what is the cost of doing the local state business excluding the proportion of taxes and rentals? Have you made a calculation after eliminating those two items so as to base your sum on the total expenses not including taxes or rentals, and your answer was "yes sir, I have made such a computation, but I believe the taxes and rental should be included."

Mr. HAGERMANN: What are the figures?

Mr. HADLEY: $2,180,871 for the cost of doing intra-state business for 1904.

A. The figure you quote as given the other day is the correct figure for 1904. I read the wrong figure just now in giving my answer.

Q. You would subtract that sum from what sum in order to get the cost of doing what business?

A. I would subtract the earning figure—will you please state your question again?

Q. You would subtract $2,160,871.64 from what sum, in order to get the balance of the expense for doing what business?

A. I would subtract that from the $10,887,290.67——

Q. You have excluded the taxes and rentals?

A. From the $10,887,290.67 less the taxes and rentals.

Q. That would be $7,529,169, wouldn't it, as we have figured it. I think you can accept that as correct.

A. You give that as a figure that is correct?

448 Q. Assuming that is correct, then, after you have subtracted from $7,529,169, the sum that you have given upon this calculation as the expense of handling local freight business, what does the balance remaining cover the expense of?

A. Exactly the same as in the other case, all other business in the state of Missouri.

Q. What were the total expenses of handling the passenger business in the year 1904 in Missouri, can you give me that figure?

A. No sir. You can easily figure it. It is all worked on that same percentage principle. By applying the per cent you can get it.

Q. Your books show it, don't they?

A. No sir, it is not a question of the books.

Q. How would you arrive at the expense of doing the total passenger business in Missouri?

A. Only by this calculation, taking the per cent that operating expenses are of the total earnings and applying that per cent.

Q. You keep a classification of your different expenses, don't you?

A. We do.

Q. You divide those expenses between passenger and freight, don't you?

A. We make a division which we call passenger and freight.

Q. Then you have upon your books a record by which you show a division between freight and passenger expenses in Missouri?

A. Not actually.

Q. You get it for the purpose of information to the company, upon that subject?

449 A. We get it for the guidance of our business, realizing that there is no possible way of correctly dividing expense between freight and passenger traffic any more than there is between intra-state and all other business.

Q. You do it as nearly exact as you can, don't you?

A. We get it as nearly as in our judgment we can get it, realizing it is only a useful measure in criticising the operating work of our operating officers.

Q. Do you know whether your books do or do not show that your total passenger expenses in Missouri for the year 1904 were $2,518,789?

A. I don't know what figure they show.

Q. Will you ascertain whether that amount is correct?

A. I can tell you that amount is not correct.

Q. As shown by your books?

A. We have certain statistics that we make up, as I said, for the guidance of the operating officers.

Q. I am asking you if it is correct as shown by your books; will you investigate your books and see if that is approximately correct; can you get that now.

A. Yes sir.

Q. I will ask you about some other figures: you testified, I believe, that the switching earnings for the year 1904, state and interstate, were $137,000?

A. $137,959.55.

Q. What was the expense of doing the business?

A. I don't know, I can probably find out.

Q. You said yesterday that the company lost money upon its switching.

A. Very decidedly, because the cost of switching is in excess of that figure.

Q. So it would be at least $137,000, and you say over that?

A. Yes sir.

450 Q. Do you know the expense of doing the other miscellaneous business in the state, besides switching?

A. I do not.

Q. Could you determine that?

A. I could not.

Q. Not even with that degree of approximation that you would with reference to the passenger expenses?

A. No sir. I haven't any figure that would apply to it in any way.

Q. The earnings, then, in 1904 on miscellaneous business as given in Exhibit 1, are $541,660, for state. $705,347 for interstate, making a total of $1,247,007; now, with the exception of switching, was any part of that income earned through the operation of freight trains?

A. There may have been some few small items, but nothing of any moment.

Q. So the expense of earning all except switching would be included under the expense of conducting passenger trains?

A. In our calculations, as we have them for our use, yes sir.

Q. Can you give me the amount you have apportioned to the expense of passenger business for the year 1904?

A. The figure returned to me is $2,517,896.72.

Q. Then, Mr. Sturgis, in order to get the expense of doing the interstate freight business in 1904, in Missouri, you would adopt this method as approximately correct, wouldn't you: add the cost of doing the local business, $2,160,871, the cost of doing the switching, which is at least $137,000, and the cost of doing the passenger

451 business, which you have given as $2,517,879; and subtract that sum from the total expenses which were $7,529,169. That would be correct, wouldn't it?

A. No sir, it would not be correct.

Q. Why not?

A. Because you have that passenger cost in there, which is no figure that you can possibly use in a calculation of that kind for any particular part of the road.

Q. You have given me that from your books, as being the amount that they showed as the expense of doing the passenger business in Missouri.

Mr. HAGERMAN: He explained it was only for the information of the officers.

A. There is a great difference between our books and statistical figures we make up, which never appear on the books of the railroad company. We go to work and assume a basis for the purpose of measuring the work of a superintendent. In itself we do not consider it correct, but we do consider it as valuable, provided we use the same basis each month and each year, and in that way can tell whether he has made an improvement from month to month and year to year. But that figure is not a figure that you can with any justice use in a calculation of this kind.

Q. It is a figure which you rely upon to operate your road to the best possible advantage?

A. It is a figure we use in a contrast of figures of previous months and years to determine whether a particular division is apparently being operated more efficiently or not.

Q. Assuming that figure is correct, Mr. Sturgis, for the purposes of the question, as representing the expense of doing your passenger business in Missouri, the way to get at the expense of handling
452 the interstate freight business would be to add the expense of doing the local freight business, which you have given in your plan of calculation, the expense of doing the passenger business, and the expense of doing the switching and subtract that sum from the total sum.

Mr. HAGERMANN: We object to that question because it assumes what it has been absolutely disclosed is not correct and is not a fact. These cases which have been tried before have marked the lines beyond any question. All the theories Gen. Hadley is talking about have been rejected. The courts say it is a question for experts. The very statement of the case shows it costs more. It shows they could not operate a railroad, in what the court takes judicial knowledge of, without the cost of the freight business being greater.

Mr. LADD: Haven't we a right to cross examine the expert after getting his opinion.

Mr. HAGERMANN: Not to make up figures which are asking him to assume are correct, when the witness has said they are not correct.

The MASTER: I did not understand the question that way. The question is based upon a presumption, which immediately follows the answer of the witness, which says that the figures are not correct. I think it is perfectly legitimate cross examination.

A. The question to me is whether that is correct?

Q. No. I say, that would be the way of getting at the cost of doing the interstate freight business; that would be the method?

453 A. That would not be the correct method of getting at the interstate freight business. You are mixing pears and peaches.

Q. Pears and peaches?

A. Yes sir, two different things. You are trying to get at something which it is absolutely impossible to get at, and that is the cost of doing the local business.

Q. I understood you had given us that?

A. No sir, I have never given you that. We are talking about intra-state. I have given you my opinion as an approximate opinion on the cost, as compared with other business. It has been said right through that the cost of doing intra-state business as distinct from doing other business cannot be determined.

Q. But you have adopted a method for determining it?

A. I have adopted the methods which have been adopted in previous cases of apportioning the expenses on the basis of the relationship of the cost of the doing of the business to the earnings.

Q. What case did you adopt that theory from?

A. I got my theory from my understanding of the Nebraska rate case.

Q. The case of Smyth vs. Ames; did you read that case?

A. Yes sir, a good many times, from the time it came out until recently. That is a law point, but that *it* my understanding of it.

Q. Is that the only source from which you got that theory of calculation.

A. That is the place I, personally, — for it. The lawyers

454 told me to do it, of course.

Q. I won't hold you responsible. I simply want to locate the source of your information for that system. You saw it in Smyth vs. Ames?

A. I saw it in that case, and that was the only basis I ever heard suggested for ascertaining the cost.

Q. Assuming we know the cost of doing the local freight business in Missouri, and assuming we know the cost of doing switching, and assuming we know the cost of doing passenger business in the state, the sum of those three items subtracted from the total expense, would represent the cost of doing the interstate freight business, wouldn't it?

A. If you arrived at the cost of doing freight business on one basis, you must use the same basis in arriving at the other.

Q. I am asking you the simple question, if the sum of those three, subtracted from the total cost would not represent the cost of doing the interstate business?

A. No sir, it would not.

Q. Why not?

A. Because you are mixing two figures arrived at on an entirely different basis.

Q. I am not talking about figures arrived at on any basis. I say, you have figures which do represent the cost of doing the freight

business, and you have figures representing the cost of doing the interstate freight business; and taking the figures which represent the cost of doing all the passenger business in the state, and adding those together, do you say that by subtracting that sum from
455 the total expense would not give you the cost of handling the interstate freight business?

Mr. HAGERMANN: That is asking what is absolutely impossible.

Mr. HADLEY:

Q. Do you say that would not represent the expense of doing the interstate freight business?

A. That is my opinion.

Q. Have you adopted any method of calculation using your three times as much expense proportion, in order to determine what was the cost of doing your interstate business in Missouri?

A. Separately from the local passenger and local miscellaneous? No sir, I have not.

Q. Can you?

A. Yes sir, by applying the per cent in the same manner.

Q. I wish you would go ahead as soon as you can and prepare a statement upon the theory that is costs $2,160,871.64 to do your local freight business in 1904, as to what it would cost upon the same theory to do your interstate freight business in 1904. I do not ask you to do it now, but at your convenience.

A. It would take but very few minutes. (After calculating.) $5,207,412.11. That is in round figures; I have not worked out the decimals.

Q. What was the per cent of cost, then, of doing your interstate freight business?

A. Eighty-four and a fraction.

Q. How did you get that $5,207,412.11?

A. By taking the interstate freight, as shown on page 1 of Ex. 1 $6,199,300.13, and multiplying by 84 per cent, which rep-
456 resents the percentage relationship of the operating expense of the whole of Missouri to the gross earnings of the whole of Missouri.

Q. How do you get the per cent of operation?

A. That is the per cent of expense which we have used right through all these calculations, and which have been referred to in explanation of this exhibit 1. This expense of operation which is $10,887,290.67 of the total earnings of $12,891,638.78.

Q. But you included in your calculations "rental" which was excluded?

A. I certainly did.

Q. You would exclude it in arriving at the sum of $2,160,871.64: now give me the cost of doing the interstate business by excluding rental and taxes?

A. It is too long an undertaking to do here, because I must get a per cent of the expenses without the fixed charges in there.

Mr. LADD: If we exclude it in one case, we want to in the other.

Gen. HADLEY:

Q. Then the figures you gave were not responsive to my question?

A. To your general question, yes, but I remember you did curtail your figures by leaving out the rental and taxes.

Q. In order to determine the percentage of operating expenses, you would subtract the cost of doing the local freight business from the entire business and divide the balance by the entire earnings?

A. No sir, it does not follow that I would.

457 Q. I will ask you, then, as soon as you can, to make that calculation upon the basis of eliminating taxes and proportion of rental?

A. That is interstate rate?

Q. Yes. Let me ask you if this method of calculation would not be correct for the purpose of determining the percentage of expense for doing all business in the State of Missouri, with the exception of your local freight business, that is, exclusive of rentals and taxes; the total expense of doing all your business in Missouri is $7,529,169?

A. That is the figure you arrived at.

Q. That is the figure you arrived at by deducting the rental and taxes from $10,887,290?

A. Yes sir.

Q. That is right, isn't it?

A. I haven't figured it over.

Q. Those are the figures we have been using. Deducting from that the local expense of $2,160,871, you have a balance of $5,368,-297 as the expense of doing all of the business in Missouri, with the exception of the local freight business. Your total earnings for the year 1904 were $12,891,638? Deducting from that the returns upon your local business which is $1,525,158, and you have the earnings upon all other business in Missouri in the year 1904, wouldn't you?

A. I confess I lost you there. I dare say you are right, but let me hear that again.

Q. I say, if you take all earnings in the State of Missouri for the year 1904, and deduct from the earnings upon local freight

458 business, the balance would represent the earnings upon all other business, wouldn't it?

A. Yes sir.

Q. In order to get the per cent of expense of handling all other business, you would divide the balance of the expense which you have apportioned to all of the business by the income from all other business than local freight business?

A. That seems right.

Q. That would be to divide $5,368,297 by $11,366,479 wouldn't it; I will give you those figures so you can see if they are correct?

A. (After examining memorandum.) That is approximately correct.

Q. That gives the per cent of expense of earnings and doing all other business for the Burlington System in Missouri, after excluding the local freight, how much.

A. 47.30 That is not the expense of the railway company.

Q. No sir, that is the percentage of expense, or the percentage that the expense of operation bears to earnings.

A. Certain operating.

Q. You have included all except taxes and proportion of rentals?

A. All except taxes and proportion of rentals.

Q. Adopting your figure of $2,160,871 as the expense of doing your local freight business, you would arrive at the percentage of expense to income on local freight business by dividing that amount by the income from local freight business, wouldn't you; and you would apply the same method in arriving at the percentage of cost on local freight as you did on all other business, by dividing
459 the expense by the income?

A. Certainly.

Q. That will give you what per cent?

A. I haven't figured out.

Q. It would be $2,160,871, divided by $1,351,388.48 and approximately 160 per cent; wouldn't it?

A. I thought it might be higher.

Q. Approximately it would be 160 per cent?

A. It would be three times the other.

Q. Three times 47.30?

A. That is what it ought to be.

Q. Is it?

A. 160 is not.

Q. Certainly not. Then does not that demonstrate the inherent weakness of your system of calculation?

A. No sir, not a bit. (After calculating.) 140 per cent, isn't it, and not 160? Isn't this your calculation 140 per cent (indicating paper).

Q. No sir, the calculation is by dividing the income from local freight business after the diminution of revenue which is $1,351,388, and the expense of doing that business according to the figures was $2,160,871?

A. What is your question, what it cost us to do the business?

Q. Yes. Can you state the first figure before the diminution. It should be the first figure and not the second in order to determine what it did cost us?

Q. Can't you take your revenue from local freight business?

A. The local freight business we did do—you are trying to find the per cent of cost of local freight business we did in 1904?

Q. Yes. The revenue from that was $1,525,158.92.

460 Q. And you would divide that into the cost of doing that business to get the percentage?

A. Yes sir, but the mistake you made is to have taken than $173,000 out first in that calculation.

Q. You would either take the amount without the diminution or the amount with the diminusion which do you say you should take?

A. If you are figuring on what it cost us to do that business, the per cent it cost us to do that business, the figure arrived at is $1,525,138.92.

Q. Mr. Sturgis, do you know as to the cost of doing——

Judge SPENCER: Did you finish the last question?
Gen. HADLEY: Yes.
Judge SPENCER: Were your figures correct, or his?

Gen. HADLEY:

Q. It would not interfere with the system of calculation whether you took it with or without the diminufion?
A. No sir.

Judge SPENCER: Including it, was there any difference between your expert's figuring and our witness?
Gen. HADLEY: There is no conflict in figures.

Q. Do you know the percentage of costs to expenses of doing of the freight business on the entire system?
A. Cost to expenses? You don't mean that?
Q. Cost to earnings, I mean?
A. No sir, I haven't that here.
Q. Will you get that?
A. Mr. Ladd has already asked for that.
Q. Will you get also, the percentage of cost of conducting passenger business on the entire line?
461 A. We haven't that.
Q. What is the proportion of expense of doing passenger business, as compared with the expense of doing freight business?
A. I can't tell you.
Q. As a general proposition, in railroading doesn't it cost more money to earn a dollar in the passenger business than it does in the freight business?
A. I haven't any figures to tell you?
Q. Have you any information upon that subject from your experience as a railroad officer?
A. The general supposition is that very little money is made in passenger business, but there is a very wide divergence of opinion upon that. Some say a great deal, and some say none at all. The officers of the State, when they want to use the maximum rate *any* there is a big margin, and railroad men on the other hand, say there is practically no margin.
Q. And railroad men are equally versatile in their contention?
A. With the State officers?
Q. Yes?
A. I hope so.
Q. I have found them so. But it is generally conceded, is it not, by all railroad men who are acquainted with the expense of railroad operation, that the percentage of expenses to earnings upon passenger business, is higher than it is in freight business. In other words, that it costs more to earn a dollar in the passenger business than it does to earn a dollar in the freight business?
462 A. You can haul an extra passenger at far less cost than you can haul an extra ton of freight. If a passenger gets on to a through train at a station, that is necessarily there

you can haul him for a considerable distance for one or two cents, and there is practically no extra cost for an additional one, two or three passengers. That is, if you don't have to put on extra cars or extra trains. So it is just a question of where the density of passengers crosses the line.

Q. In railroad business, if say group VI, in which the Burlington road is included, isn't it your testimony as an expert on this question, that the cost of earning a dollar in the passenger business is proportionately greater than the cost of earning a dollar in the freight business?

A. It is a matter we could tell by approximate figures and I would rather trust to those than to express a mere opinion.

Q. I would like to have these.

Can you determine, upon your road, the proportionate cost of earning a dollar in freight business, as compared with the cost of earning a dollar in the passenger business?

A. No sir, I can not.

Q. Don't you make such a report to the State Board of Railroad and Warehouse Commissioners in Missouri of the apportionment of expense between the passenger and freight business?

A. No sir.

Q. Have you figures upon your books from which you could make such a report?

A. No sir, not accurately.

Q. Do you simply keep the cost of conducting the passenger business in the State of Missouri in the manner you have stated?

463 A. We do not ordinarily do that.

Q. You have done it in the manner you have stated already?

A. For figuring up in this particular case.

Q. Don't you apportion the items of expense between passenger and freight traffic throughout the entire system?

A. We do.

Q. In the same manner you have for the State of Missouri?

A. May I cut the argument short on that by explaining: Our operating divisions, by which we make up these figures, are not the same as the state lines. Therefore, when you ask about getting it specifically for the State of Missouri, I say we do not, and have not, except in this particular case. In this case we took and divided up the operating divisions so as to make them fit the State of Missouri as nearly as we could. It was an approximation, of course.

Q. Are you talking about passenger business?

A. About operating expense, which include-, of course the apportionment of freight and passenger.

Q. I was trying to ask you if you do not apportion over the entire system, between freight and passenger?

A. Yes sir, I said we do.

Q. Will you get these figures?

A. These figures are for our own individual use, and not for publication nor should they be used in any calculation brought into this case, and for that reason I prefer not to give them. We con-

sider them confidential information, and they are too apt to be misused.

Q. You give your earnings from passenger and freight business?

A. The natural divisions.

464 Q. They are kept separately?

A. Yes sir, and we can divide them accurately and give them accurately. But the other is a figure we cannot give accurately. We merely approximate it for our own individual use in sizing up, as I have explained, the work done by our division superintendents. They are very dangerous figures to give out because they might be misconstrued and misused.

Q. Mr. Fisher asked you for access to the books from which he could get these figures, didn't he, you or one of your subordinates?

A. We did just what we told you we would do. We opened our books entirely to Mr. Fisher, and his experts, to let him see whatever he pleased.

Q. I asked you the question, if Mr. Fisher, in examining these books as experts for the State, did not ask for access to these books or papers which showed the apportionment of expenses between conducting the freight business and conducting the passenger business for the entire line, and if that information or access was not refused him?

A. My recollection is that he asked me individually for access to these papers, and I told him that for his individual inspection they were open to him just the way everything else was that we had. We kept nothing from him, and I do not know of a single case of refusing Mr. Fisher any item of information he asked for, or refusing him access to any single book or paper.

Q. Did he have access to these books?

A. *Where* he went and looked at them or not, I don't know. But I certainly did not refuse or authorize the refusal to let him

465 see any book or paper. If there was information which his eye came upon which had nothing to do with this case, I trusted him not to use it in this case. I thought I could rely upon him for that purpose.

Q. You told him you regarded these figures as confidential and would not expect him to take them?

A. I don't know if I had that conversation. It would not be surprising if I made that remark to him.

Q. At all events, as a result, he did not have access to those books and papers?

A. That is in itself an implication that he had access to these papers.

Q. I simply want to get an understanding of it. Are you willing to have Mr. Fisher look at those books, so he can give us the information contained in those books, showing the expense of conducting the freight business, as compared with the expense of conducting the passenger business?

A. I should not be willing to have him give you any information which he might hap-en to see, not bearing upon this case.

Q. Suppose Mr. Fisher thought it was pertinent to this case, and that we thought it was.

Judge SPENCER: There is no reason to except that they are arbitrary figures, which the witness has explained.

Mr. HAGERMANN: If there is any contention that these are original figures and your Honor thinks they ought to go in, all right. But they should not be used and published throughout the country when they may be the subject of misconstruction. These figures are prepared simply for the purpose of establishing a measure
466 of the competency and growth of the employees.

The MASTER: I think a question of that sort ought to be and probably will be settled between the experts and counsel on both sides.

Mr. HAGERMANN: We thought it was settled between the experts.

The WITNESS: The danger of these figures, because they are only approximations was fully appreciated by the Interstate Commerce Commission, which originally attempted to get such a division, but in 1893 decided they would no longer ask for that information, for the reason that it should not be published, as it was misleading, and it would do injury to have the figures published. In other words, they realized fully that these figures were only approximations and that it was impossible to get them correct.

It is absolutely impossible to divide the expense of ballasting the road, building bridges, maintaining roadway, stations, and so on, and say "this is due to passenger," and "this is due to freight." It could be done only on an arbitrary basis, and is a very wrong and dangerous figure to get out; and that was appreciated by the Interstate Commerce Commission and withdrawn from their reports after 1893.

The MASTER:

Q. But in making these apportionments, you did assume a basis?

A. Yes sir, because so long as we used the same basis month in and month out and year in and year out, it acts as a check, or gives us a check upon the operation of the superintendent of the operating division, even if this basis is only an approximation.

Judge SPENCER: And this is an arbitrary amount you take?
467 A. An arbitrary division. There is a very wide variation between them.

(Colloquy follows:)

Recess was here taken until two o'clock P. M. of the same day.

SEPT. 20, 1906—Two o'clock p. m.

After recess the following proceedings were had:

Gen. HADLEY:

Q. I will ask you, Mr. Sturgis, if you have investigated and can now state according to the account that you now have, the expense of conducting your passenger business, what those expenses are?

A. No sir, I have not obtained that figure yet. I went out to lunch and have not gotten that.

Q. You will send for it?
A. Yes sir.
Q. You will send for that as soon as your boy returns?
A. Yes sir. Your question was for the whole system?
Q. Yes. You have given the expense for Missouri, I believe, as $2,517,897.
Q. Mr. Sturgis, what items enter into the item of expense which you have called "Conducting Transportation," on page 1 of Ex. 1?
A. There are thirty-eight items.
Q. That enter into the item "Conducting Transportation"?
A. Yes sir. That is, we keep 38 subdivisions of that account.

468 Q. Are the particular items that enter into it station service, train service, engine service, and what you call "Contingencies"?

A. Yes sir, that is the first subdivision. These four make the first subdivision of conducting transportation; and then they are further subdivided into seventy-three accounts.
Q. What are the others a subdivision of? Any one of these four?
A. They are all divided among these four.
Q. But these 73 are summarized into these four accounts?
A. Yes sir.
Q. And the 38 are summed as "Conducting Transportation"?
A. Yes.
Q. "Train service" can be definitely arrived at, with what we would call reasonable accuracy, definitely apportioned among freight and passenger traffic, couldn't it?
A. Yes sir.
Q. And "Engine service" can be apportioned in the same way?
A. Not as accurately, but with reasonable accuracy.
Q. On what basis do you apportion "Station service," between freight and passenger? On a revenue train mileage basis?
A. We do not have any one rule for apportioning station service. We treat the individual accounts differently. In that way it is different from the Wabash account to which you referred this morning.

Gen. HADLEY: I have figures here Judge Spencer and Mr. Hagerman, which Mr. Fisher tells me were prepared by Mr. Sturgis in connection with this subject. All I want is the ultimate facts, and I should like this to go in evidence now.

Q. I will ask you to examine this paper and see if it was prepared by you or under your supervision, with reference to

469 the freight and passenger division of expense in the State of Missouri?

A. (After examining paper.) This appears to be a correct statement, and appears to have been made in one of my offices.

Gen. HADLEY: We offer this paper in evidence.
This paper is marked "Exhibit 4."

Which paper is in words and figures following, to-wit:

470 *Statement of Operating Expenses, by Classes of Service, State of Missouri, Year Ending December* 31, 1904.

	Freight.	Passenger.
Station Service	$954,191.28	$333,980.64
Train Service	348,619.58	241,089.48
Engine Service	1,119,184.80	494,038.32
Contingencies	256,098.17	111,243.98
Total Conducting Transportation	2,678,093.83	1,180,352.42
Maintenance of Equipment	993,008.66	322,550.24
		72,320 over*
		1,512.89 under*
Maintenance of Road & structures	789,943.92	686,156.42
General Expenses	386,888.22	328,837.64
Total	4,847,934.63	2,517,896.72
Grand Total		$7,365,831.35

To Mr. C. I. Sturgis, General Auditor, Building.

Office of Auditor of Expenditures, Chicago, September 14, 1906.

Exhibit 4. September 20, 1906.

471 Q. This Ex. 4 is a compilation of the division of passenger and freight expenses for the State of Missouri, for the year 1904?

A. Yes sir.

Q. On what basis do you apportion station service between freight and passenger? on a revenue train mileage basis, or approximately so, Mr. Sturgis?

A. The general rule which applies to each of the accounts comprising station service is if the station is distinctly freight or passenger, it is set aside to freight or passenger.

Q. Then, with the exception of such station houses as are either freight or passenger exclusively, the other passenger station expenses are apportioned on the basis I have indicated?

A. Yes sir.

The MASTER: This morning I called for a definition of the term "ten mileage." Now you have the term "revenue train mileage," if I understand you. I should like for the witness to explain the meaning of the term "revenue train mileage basis"?

A. "Revenue train" is one in which freight and passenger yielding revenue are carried, and the distinction between revenue train mileage and maintenance train mileage is that the revenue train, as I said, are trains which earn revenue; and the maintenance trains are those which are used in repairing or operating the road, as for instance a ballast train or a train which goes out and distributes any kind of material along the road for the use of the road.

[*In pencil on margin in copy.]

Q. Then train mileage simply means the unit of measure
472 for the carriage or movement of a train a mile?
A. Yes sir.
Q. That is the unit?
A. Yes sir.
Q. And if that is a train which carries freight and yields a revenue, it becomes revenue train mileage?
A. Yes sir.
Q. And if it is a construction or repair train, it is maintenance train mileage?
A. Yes sir.

Gen. HADLEY:

Q. Or, if it carries passengers instead of freight, it is a passenger train revenue mileage?
A. Yes sir.

The MASTER:

Q. A train mile is a mile run over by a train, without respect to the length of a train or whether it carries freight or passengers: is that true?
A. Yes sir. Except that we keep separate train mileage for freight trains and for passenger trains.

Gen. HADLEY:

Q. "Expense of contingencies," how is that apportioned between passenger and freight?
A. The contingencies under conducting transportation are made up——
Q. I didn't ask you how they were made up, I asked you how they are apportioned between freight and passenger?
A. If you let me answer it will answer your question. The group "Contingencies" which is a group under "Conducting Transportation," is made up or consists of, as I recall the classification, damage and loss of freight, damage and loss of baggage, damage to property, stock killed and injured, personal injuries, wrecking, and
others. But these particular ones are apportioned to freight or
473 passenger according to the class of trains or the class of service. For instance, all lost and damaged freight would naturally be freight. Loss and damage to baggage would naturally be passenger. Damage to property, if possible, we would determine whether done by a freight train or passenger train, but lots of damage is done without our knowing what train did.
Q. Or if any train at all did it?
A. Yes. Sometimes—well, you know the rest. Then, stock killed and injured, we do not know what train did that in many instances. Where we can locate it as a train of a particular class, we put the expense in that class of service.
Q. You apportion it absolutely, when you know the facts?
A. Yes sir. And when we don't we have to apportion it on a train mileage basis. Among the other things, there is car mileage. That is freight.

Q. Explain what you mean by car mileage?

A. Car mileage, or rather, car interchange, which is the present name of the account is the balance between what we pay and what we receive for rent of freight cars where they go out on a regular per diem, or car mileage basis. Where they are rented, either by us or the other party on a regular per diem, or car mileage basis, which is 20 cents per day up to a certain time and $1.00 if they have been out beyond that time.

Q. It is simply what you pay other roads or they pay you for the use of cars. It is a settlement of the difference between these accounts.

474 A. Yes sir, provided it is on a per diem mileage basis.

Q. Whatever the basis, it is a settlement of accounts for the interchanged use of cars?

A. I pointed out that per diem or mileage, because if you rent a car outright, and pay us so much a week, or something under contract, it does not go into this account.

Q. In 1904, was the balance on the debt or the credit side of the Chicago, Burlington & Quincy Railroad Company?

A. I haven't that in detail.

Q. A properly equipped road ought not have a debit on that account, should it Mr. Sturgis? That is, a well equipped road, properly equipped with the proper rolling stock, ought not it have as much coming to it from other roads as the roads would have from it?

A. It would depend on how honest its neighboring roads were.

Q. Assuming that they are honest?

A. I don't know how it runs, but I should say we paid more than we got.

Q. The question was, whether if a road were properly equipped, it ought not have a balance?

A. Ours is not properly equipped, in one sense. We ought to get a great deal more equipment, and are getting it just as fast as we can, and that is why we are putting away a fund, in order to get it.

Q. Have you finished answering about that?

A. There are certain other expenses, hire of dining car and passenger and buffet cars.

Q. Go to the next item "Maintenance of equipment," how

475 is that apportioned between freight and passenger service?

A. Practically actually, whether the repairs are on freight or passenger cars. There are certain expenses in connection with repairs, where the gangs working on them are in both classes of service, where we cannot divide it. But that is a small part of the expense.

Q. That is practically actual?

A. Yes, sir.

Q. "Maintenance of road and structures": What is the division there?

A. In the road and structures it is almost entirely on the total train mileage.

Q. Except in those cases where it would be for maintenance of a freight depot, or maintenance of a passenger depot exclusively?

A. Yes, sir, or where we have sometimes solely freight tracks or solely passenger tracks. We try to get that separate.

Q. Where it can be kept separately, it is done so accurately?

A. Yes, sir.

Q. "General Expenses" are apportioned on what basis?

A. That is in one of the sub-divisions of "conducting transportation"?

Q. No, but it is given here on Exhibit 4 and apportioned between freight and passenger.

A. Most of those accounts in that division have different bases. That includes Traffic Department expenses, outside agencies, advertising, salaries and expenses of general officers, salaries of clerks, general office expenses, legal expenses, rent of buildings,
476 tracks, freight and terminals, insurance, stationery and printing, and miscellaneous.

Q. Now the question is, how it is apportioned.

A. In the case of Traffic Department expenses, if it is a freight department officer, it goes to freight; and if a Passenger Department officer it goes to Passenger. Those which are both departments, are apportioned on the basis of freight and passenger revenue train miles. Outside agencies are apportioned on the basis of freight and passenger mileage, where it could not be done actually.

Q. Those are all of the items of expense that you have included here in your division?

A. No, sir.

Q. What else?

A. You mean those two are all, or those I have read?

Q. Those I have named. You have some other under "General."

A. I have given you some that come under the head of "General expenses."

Q. I have asked you about expenses that have been apportioned between the passenger and freight, according to Exhibit 4: I ask you if there is anything else besides taxes that should be?

A. I have not finished with the detail of those general expense accounts.

Q. I asked you if you had, and I understood you to say you had.

A. I have given you only two of them. In the case of advertising,
it is practically all passenger. In the case of general officers'
477 salaries, it is passenger or freight, where the officers are either in the passenger or the freight service, otherwise it is on a train mileage basis. Legal expenses are divided between passenger and freight on the basis of revenue passenger and freight train mileage. Rent of buildings, yards and terminals, if the terminal is a freight terminal it is freight; if it is a passenger terminal, to passenger. If both classes of service it is apportioned on a train mileage basis. Insurance, so far as possible, is apportioned on the nature of the property insured, either freight or passenger; otherwise on a train mileage basis. That is practically all of it.

Q. Now I will renew the question I asked you awhile ago: You have enumerated all the different items of expense pertaining to

freight and passenger service which have been mentioned in Exhibit 4?

A. That is my understanding.

Q. Are there any other expenses beside taxes?

A. Taxes and rentals.

Q. That is what you denominated "rental" in your Exhibit 1?

A. Yes, sir.

Q. That is the rental you refer to?

A. Yes, sir.

Q. In the apportionment of the expenses between freight and passenger service which you have mentioned, don't they relate simply to the State of Missouri?

A. They are the general rules governing the whole property.

Q. And the method you have just described in apportioning the items of expense as they appear upon Exhibit 4, which you
478 have mentioned, which relates only to the expense of freight and passenger in the State of Missouri, and is followed in apportioning the expenses between freight and passenger for the entire system?

A. Yes, sir.

Q. I notice that during the course of your testimony upon that you have examined and read from a printed book: In order that it may be in the record I will ask you to state what that is?

A. It is a classification of construction and operating expenses of the Chicago, Burlington & Quincy Railway Company.

Q. And that book contains instructions both for your office, as well as for the accounting officers throughout the entire System?

A. Yes, sir.

Q. And it is your business to see that the instructions given in that book are followed?

A. Yes, sir.

Q. And you do see that it is done?

A. I endeavor to.

Q. Now if you will be so kind as to give me the apportionment of expense between freight and passenger for the entire System?

A. The passenger portion was $13,205,896.53; that is for the calendar year ending December 31, 1904.

Q. What was the amount of freight?

A. I haven't it.

Q. What was the entire expense of the System in 1904?

A. I haven't that yet. I can get it for you.

Q. Send for that, please, and also if you are not prepared to give the freight and passenger earnings for the year 1904
479 for the entire System, I would ask you to also ascertain those figures.

Q. The total earnings in 1904 from freight and passenger and miscellaneous were $12,891,638?

A. That is in Missouri?

Q. Yes. Now what proportion of those earnings did you assign to the $4,487,000 worth of expenses that you have charged to freight, according to Exhibit 4?

Mr. HAGERMAN: That is objected to, as Exhibit 4 does not assign actual divisions.

The MASTER: If the question assumes that the paper is what it is not, of course it should be corrected.

Gen'l HADLEY: The question does not assume any proposition. It is a division made in the manner indicated.

Mr. HAGERMAN: I haven't any objection to him giving the figures, but object to the question implying something.

The MASTER: I presume counsel for the State is endeavoring to ascertain whether or no- an actual division has been made.

Mr. HAGERMAN: I don't object to that question, but he did not put it that way.

Gen'l HADLEY: That is the purpose of the question.

The MASTER: If his presumption is wrong, the witness can correct him.

(Previous question read.)

A. Am I right in understanding that your question means how much of those earnings are freight?

Q. Yes.

480 A. The figure is $7,724,459.05, as shown on the first sheet of Exhibit 1.

Q. How much are passenger?

A. The figure the sheet shows is $3,920,172.40.

Q. Then where are the expenses, Mr. Sturgis, for doing the $1,247,007. worth of miscellaneous earnings; under which passenger or freight, are those expenses included?

A. We only recognize in that arbitrary apportionment of expenses two classes of service. Our arbitrary apportionment of expenses has nothing whatever to do with the earnings; absolutely nothing. We recognize two classes of service.

Q. I was not asking so much about your method of classification, as a matter of fact, but by that division under which head of the expenses, freight or passenger, are the expenses incident to the doing of the $1,247,007 worth of miscellaneous business?

A. It will be necessary to apportion the miscellaneous according to the nature of the business.

Q. How should these expenses be apportioned, and how should the earnings be apportioned?

A. There is no relation between earnings and expenses in this arbitrary division. We take our earnings and divide into three portions, according to the facts. We divide our expenses in two, on an arbitrary basis.

Q. I am not asking for the relation between expenses and earnings: I ask how they should be apportioned between the two. That is, how much of the miscellaneous earnings should be given to freight, and how much to passenger?

Mr. HAGERMAN: In this arbitrary division?

481 Gen'l HADLEY: No, sir.

A. So far as the earnings go, there are three divisions. Miscellaneous earnings are not freight earnings. Miscellaneous earnings are not passenger earnings.

Q. Don't you get your earnings from mail from the operation of passenger trains?

A. We do not get our earnings from mail except from the Government.

Q. Why, of course not. You do not get your earnings for carrying freight except from the people for whom you carry the freight, do you?

A. No, sir.

Q. Do you get your earnings on mail from the operation of freight trains?

A. If you ask if we carry mail on passenger trains, we certainly do.

Q. And you don't carry mail on freight trains?

A. But we also get some of our earnings from the mail which have nothing to do with the passenger trains; where it is incident to special train service.

Q. Special mail trains, you mean?

A. No, sir, I mean that which is paid us by the Government for mails, covers more than the actual service on the passenger trains; it covers service at stations.

Q. What services at stations do you render?

A. In some cases we deliver the mail from the station to the post-office.

Q. That is a very insignificant part, isn't it?

A. It is a regular part of the duty of the station operator,
482 or what not.

Q. But wouldn't you say, as a general proposition, as approximately correct, that from the operation of passenger trains comes your earnings from mail and express?

A. I don't like the way you put it. I would say, most of the remuneration we receive from the government is for the hauling of mail, and we haul it on passenger trains. But I will not and cannot accept the statement that mail earnings are passenger earnings, and that is the reason I hesitated to answer any question that points that way, and you asked your question in that way.

Q. Are they passenger train earnings? Do you like putting it in that way any better?

A. Such part of them as are for the transportation of mail on trains are passenger train earnings.

Question by Mr. LADD:

Q. In this Exhibit 4, which purports to be a statement of your operating expenses in Missouri, by classes of service, for the year ending December 31, 1904, you have two columns; one is headed "freight," and the footing under that column is $4,847,934.63, and the other is headed "Passenger" and the footing of that column is $2,517,896.72: I would like to ask you whether the figure on page 1, I believe it is, of your Exhibit 1, designated as "Mail, express, etc.", earnings $1,247,007.33 has been earned by the expenditure of the $2,517,896.72, which you have listed under "Passenger" in Exhibit 4?

A. No, sir, not all of it.

483 Q. Well, how much of it?

A. I could only give you an approximate figure; it would take some little time to work that out.

Q. Could you work it out approximately?

A. Yes, sir.

Q. And you say you divide your earnings into three classes, and your operating expenses into two classes; but in those two classes of operating expenses, if I understand you correctly, you figure all the expenses incident to the revenue from the three classes of earnings: Is that right?

A. Yes, sir.

Q. Now I want to know, if I can, how much of it is properly attributable to the passenger service, technically speaking, and how much to the mail, express, etc., service?

A. I have stated that the earnings on passenger trains include the larger part of the earnings on mail. When it comes to the earnings for different classes of service, they divide into two; but when you talk about passenger earnings, then you cannot include your miscellaneous earnings. If you talk about your freight earnings, you cannot include some things so classified because they concern freight cars. That is the only distinction. With that understanding, I think the whole thing is clear.

Q. Do you understand our difficulty on this side?

A. I think I do.

Q. Can you relieve us any?

A. I think I have, by that statement.

Q. You haven't me. I understood you to say that ap-roximately you can separate that?

A. Yes.

484 Q. I would like to ask you to do that, if you can. Do it later.

A. Very well.

Questions by Gen'l HADLEY:

Q. The other proposition is also correct, that the other two items appear in the miscellaneous earnings, namely, "switching" and "car service," were made possible by the expenditure of the $6,467,-934.63, which is under the head of freight?

A. It is so in regard to the switching, but not also in regard to the car service, with which there is practically no expense, in the sense you mean to attach to it.

Q. There is expense in the maintenance of equipment, which is apportioned under the head of "Freight." That expense enters into the earnings of demurrage, doesn't it?

A. To keep your meaning and my meaning clear, let me ask you a question: We have an arrangement with all the roads around the country by which we use their equipment and they use ours. They pay us twenty cents a day——

Q. I don't mean that.

A. You said I might ask the question. —they pay us twenty cents a day for that; is that a freight earning?

Q. I am not a railroad man. I should think it was.

A. The car service is identically the same thing as that.

Q. My contention is, that that is a freight earning. Now is not the earning of that income covered by the heading "freight"; Isn't that true?

A. I don't see any truth in it. While the car is standing on the side-track there is practically no repairs going on it. It is
485 for the loss of the use of the car and the interest on the money, on the investment. It necessitates the purchase of more cars, keeping a larger equipment, is a capital account; cost of property.

Q. That all goes into capital account?

A. Yes, sir, it requires a larger investment.

Q. Is there any depreciation in value by reason of the use of the car by the shipper?

A. Certainly there is some, but it is comparatively a small part of it.

Q. Whatever expense there is of that nature is covered by the expense under freight?

A. Yes, sir, because it is a freight car.

Q. Have you those expenses I asked you for, as yet?

A. No sir, not as yet.

Q. You have already testified that in apportioning the amount of interstate freight to Missouri, you divided it on a mileage basis, didn't you?

A. Yes, sir.

Q. That is, you divided it on a mileage basis between Missouri and Illinois, and Missouri and Iowa, and Missouri and Kansas, or whatever states are involved?

A. Yes.

Q. Is that fair to the earnings in Missouri?

A. That is a mooted question, and one I talked of two hours to the statistician of the Interstate Commerce Commission.

Q. Are you familiar with the rates in the states contiguous to Missouri?

A. Not specifically.

486 Q. If the general average of those roads was lower than in Missouri, then such division would not give as much revenue to Missouri as she ought to have, would it?

A. The rates in those states would not cut any figure on that basis: is that——

Q. If you were——

A. For instance, you take fifty miles in Illinois and fifty miles in Missouri, and take the through rate on that—Did you mean made on sum of the locals?

Q. Yes. For instance, the rate from Kansas City to Chicago is how much?

A. I haven't them in my head. I don't see them once a year.

Q. Assuming they were $1.00; and that forty cents was the local

rate in Illinois, and sixty cents was the local rate in Missouri—That, you understand, is approximately. A division on a mileage basis would give Missouri fifty cents and Illinois fifty cents, assuming the distance was the same?

A. Yes sir.

Q. And if the rates were lower in Illinois, that would not give Missouri its proper proportion of the revenue on that division; am I right on that?

A. That is not a matter of accurate figures; it is a matter of judgment. I think there are decidedly offsetting conditions on that, such as the expense of the Chicago end of the line, and the terminals, which are far in excess of anything else.

Q. Of course, that applies simply to freight originating in Chicago?

487 If it originated at some town in Illinois and ended at Kansas City, you would have the terminal expense on the other end?

A. That is, so far as the argument goes. The Pennsylvania Railroad Company is the only road I know of that arbitrarily takes out a fixed amount for terminals. At Jersey City they used to take, arbitrarily, five cents, before apportioning their earnings. That, of course, covered their New York ferry expense, and everything.

Q. In a division of earnings with other roads, if you have a joint tariff, you don't divide it on that basis, do you?

A. Not as a rule.

Q. You divide it on a percentage mil-age basis?

A. Not always. It may be a percentage of the locals.

Q. That is what I meant to ask.

A. I don't profess to be an authority on rates, or the making of rates. As a rule, I would say that density of traffic would give the figure. The only opinion I have, which is in a general way, is that the density of the traffic would affect the division.

Q. What do you mean by "density of traffic"?

A. I mean the number of ton miles over a particular piece of track. For instance, if there were a million tons miles over a piece of track one hundred miles long; and over another piece of track five hundred thousand ton miles, in a certain length of time, you would say the density of traffic was double, one over the other.

488 Q. And you agree with the statement made here the other day by Mr. Lathrop, in argument, that the density of traffic determines the profitable or the unprofitable rate, and that the greater the density of traffic, the greater the earnings of the road?

A. Not necessarily.

Q. You do not agree with that?

A. It does not depend upon that alone. There are all other conditions of increased expense. It might be cheaper to operate one road than another. But two roads of the same grade, the same expenses, and all that kind of thing, the road with the greater density of traffic would naturally make the more money.

Q. The same rule would hold in determining the density of traffic

on passenger as on freight? You would divide the number of tons carried by the number of miles?

A. To determine the density?

Q. Yes, the density per mile; and the same thing would be true of passengers?

—. ——.

—. Now what is the density of traffic of the Burlington System in the State of Missouri?

A. I haven't it.

Q. Can you get it?

A. Yes, sir.

Q. Would that require computation?

A. I think I can get it but I am not sure whether I have those figures. It would probably take some time to get those figures.

Q. Will you get those figures?

A. I cannot get it today or tomorrow, unless we drew it off at the time we got the operating expenses for the State of Missouri.

489 Q. And will you also get the density of traffic for the entire system?

A. Yes sir; you have that already.

Q. What is it for the entire system?

A. I haven't that here.

Mr. LADD: What is meant by density of traffic? I am not sure that I understand exactly.

Judge SPENCER: The number of pounds of freight, and the number of passengers, in a given length of time, passing over a given piece of track.

The WITNESS: To a mile of road. For instance, if we had a ten mile haul on the System, and you divide that by the number of miles of road, that will give you the number of ton miles per mile of road. That is the measure ordinarily accepted for density of traffic.

Mr. LADD:

Q. That is, the number of tons hauled on the average over each mile of road, in a year or any other period?

A. Yes, sir; within any period.

Gen'l HADLEY:

Q. I asked you this morning, in reference to local and through freight trains, and also as to what kind of freight they carried. You are familiar in a general way, aren't you, with the method in which freight is handled upon the Burlington System?

Q. In a very general way. That is an operating question more than an auditing question.

Q. But the method in which freight is handled determines of course the cost of handling freight?

A. It very largely depends upon that, yes.

490 Q. Have you any information here now that has been called for, Mr. Sturgis?

A. I am reminded when I send up for those figures for freight

and passenger expenses, as shown by the statistics that we use for our operating offices, that they do not cover all our expenses.

Q. What items are omitted?

A. A number of items. Those items we do not think a Superintendent is responsible for, we arbitrarily cut out.

Q. What do you mean by that?

A. I mean they don't divide all the expenses.

Q. What expenses do you mean are arbitrarily cut out?

A. Well, now, for instance we have got a question now on a piece of road where the ballast—it is on a piece of road in Western Nebraska—when it was put down originally the nature of the soil was such that it sunk out of sight in a very short time, much less time than it should have. Now ordinarily when a road has once been ballasted and that is charged to the cost of the property, any renewal of the ballast, under what is perhaps an arbitrary rule or practice of ours, is charged to operating. Now up there in Nebraska is a case where the ballast has gone out of sight, and we had to renew it long before it should, ordinarily, have to be renewed. That was probably the fault of the Engineer. But we don't want to charge that up to the Superintendent up there and have him make a bad showing by having a large amount of ballasting charged to his account. So that item we leave out.

Q. That would not affect the relation between the two?

491 A. Not necessarily.

Q. Here in the State of Missouri, where you have apportioned expenses between freight and passenger, you have as the sum of the two the same amount that you have as your total expenses of conducting the entire road in Missouri, less taxes and rental?

A. It is possible that was not made up in any particular office, and that particular statement was not made up on my individual say-so. I confess I have not seen that statement before, and I do not know how it got into Mr. Fisher's hands, except on the general principle that everything was open to him.

Q. It was given to him by the office of the Auditor of Expenditures.

A. Just how he arrived at those expenses I have not investigated, because I did not order that particular statement made up.

Q. In all events, in reference to the Missouri portion of your Road, at least, the apportionment of expenses between freight and passenger in the method you have already indicated equals the actual expenses that appear on Exhibit 1?

A. I see it in that statement there.

Q. That is correct?

A. I don't know. I don't know how that was brought around. It is possible there may not be any such case as I have pointed out, in the State of Missouri, or it may be they used some arbitrary figures there, as all the way through, in making up that statement.

492 I don't know how they got at it, and it may not be correct.

Q. You have $650,000 set aside for making repairs to Missouri River bridge. If that amount had not been set aside the

discrepancy would certainly have reduced the apportionment between freight and passenger, would it not?

A. That is what I want to find out, how that was done.

Q. You have already told us.

A. That particular expense was not apportioned between freight and passenger originally.

Q. Except in such isolated instances as where the ballast sinks in the sand, let us have the freight and passenger expenses if you have them on your books?

A. I haven't them here.

Q. Mr. Sturgis, what figures did you read that suggested to you that there might be occasional inaccuracies?

A. I told you I will get you some figures; the ones they sent down are not the correct figures.

Q. You will get them?

A. Yes. But you did not ask for the earnings for the System. Do you want those now? I have them here.

Q. Yes.

A. For the year ending December 31, 1904:

Freight	$42,209,404.24
Passenger	15,654,042.29
Miscellaneous	6,034,329.56
Total	$63,897,776.09

Q. How did you distribute those miscellaneous earnings: What part goes to freight and what part to passenger: That is,
493 what part is mail and express?

A. That is the figure I told you I would get up for you, and I have a memorandum to do it. That is the one I sent up for.

Q. What is there upon the information that was brought to you, as to freight and passenger expenses for the entire system, that caused you to perceive that they are inaccurate? Are you familiar with the amount?

A. No, sir, I told you that they have made them agree with the total, and they will not agree with the total, I know.

Q. How would that item of lost ballast be charged? To operating expenditures or to construction?

A. That ought to be charged to operating expenditures, I presume.

Q. How would it be apportioned?

A. Just as I have said. We do not apportion that. The question is, if we apportion it or not. We do not always apportion our operating expenses.

Q. But it would appear upon the books as an expense?

A. Yes, sir.

Q. And you could determine the amount of expenses arising from such expenses as you have testified to, though the items are not apportioned?

A. It would be most indefinite.

Q. You could for the year 1904?

A. I don't think so.
Q. They appear somewhere??
A. Yes, but just what is apportioned and what not, I cannot say. A large number it is practically impossible to appor-
494 tion.
Q. You have the total expenses for the year 1904?
A. Yes, sir.
Q. You have the amount apportioned on your books to passenger?
A. Yes, sir.
Q. You have the amount apportioned to freight?
A. Yes.
Q. If the sum of those equals the sum of your entire expenses, it would indicate that that year there were not any such expense as you mentioned, occurring?
A. Undoubtedly.
Q. In the figures brought to you, as I understand it, the sum apportioned to passenger and the sum apportioned to freight, equalled your expenses in 1904?
A. You evidently want me to tell you what it says here. The passenger proportion was deducted from the total, and this shows everything else arbitrarily into the freight expenses. I know that in a statement of that kind the clerks made the statement upon their own basis.
Q. The only thing that caused you to be suspicious about the figures was, that the sum for passenger and freight equalled your total expenses?
A. That is just what makes me suspicious, because they cannot do it.
Q. But you will examine the books and see if the actual figures apportioned do equal?
A. They took the passenger and deducting that out of the total, said "the rest is freight." That is not the right way to do it.
Q. That is what you did in determining the amount of
495 inter-state traffic in the State of Missouri, didn't you?
A. What do you call inter-state traffic?
Q. Inter-state freight. In apportioning the amount of inter-state freight in 1904 in the State of Missouri, you subtracted from the sum earned on all freight that which you found was earned on local freight?
A. There were two elements in that: Having determined one, the other was the balance. But that is not so in this case. There are three elements: freight set aside, and passenger set aside, and that which has not been divided.
Q. There do not appear to be any in the State of Missouri?
A. There was, and that is why I question that statement.
Q. In determining the freight and passenger earnings in Missouri in 1904, if you made any mistakes, in not getting all the way-bills relating to local freight, it would increase the local——
A. And if they got too much in the local it would increase the inter-state.

Q. There wasn't any danger of your finding any more relating to local than you did?

A. Yes, sir, there is just as much danger on one side as on the other.

Q. Mistakes in addition?

A. Presumably that is all right; your experts were there with full privilege of examining, and they have not raised any question.

496 Q. Going back to what I started to ask you: You are familiar, in a general way, with the method in which State and Inter-state freight is handled in Missouri?

A. In a very general way.

Q. You testified the other day, in answer to a question of Judge Spencer, that you "had gleaned,"—I believe that was your word?

A. I believe so.

Q. (continued). "And could judge from experience, not only from general experience on this road, but also from figures I have seen on other roads, the cost of doing local or intra-state business will be anywhere from three to seven times as much proportionately to the earnings, as doing all the business in the State";

Now from what source have you gleaned information, in arriving at your opinion upon that point?

A. There are a great many different elements that enter into that. One, for instance, is the fact that all intra-state business uses two terminals; whereas the other business may use one and may not use any. And——

Q. Pardon me, I don't want to interrupt you, but I was not asking you for the different elements that enter into the increased cost: I was asking you where you had gleaned your information. The question is, from what source did you glean your information as to the additional cost. Not what things enter into the additional cost. I will get to that in a moment.

Mr. HAGERMAN: Answer in your own way.

Gen'l HADLEY: If you understand the question go ahead; but if you don't, I want to make it clear.

497 A. It is hard to answer that without appearing sarcastic, and I don't want to do that. If you talk about "gleaning information," I know a way-bill reading from St. Louis to Hannibal has two terminals in the State of Missouri. You might say I "gleaned" that information from the way-bill.

Q. That is what I am getting at.

A. I cannot say. I may have gleaned it from the report, or in the air. I simply know that is an element.

Q. You have gleaned that information, then, in reference to handling freight, inter-state and intra-state, from an examination of the records?

A. From knowledge of records. Not a specific examination for this particular purpose, but from what I have done ever since I have been with the Road, now over a quarter of a century.

Q. Do you want to indicate if there are any other sources from

which you have gotten information upon that proposition, beside looking at the papers and records of the Burlington System?

A. All the discussions I have heard on the subject, all the testimony I have heard given by other people, all the written and oral arguments I have heard made; and I have heard the matter discussed considerably by officers of this Company and by officers of other Companies.

Q. Your discussion has been with people interested in resisting legislation of this kind: Was that the occasion of the discussion?

A. I did not say that. I say it was all with people who
498 know.

Q. Was that all the source of your information?

A. I think everything is covered by those remarks. I don't think there is anything covered by anything else; positions I have held, and everything else.

Q. Does it cost any more to haul a car of freight from Council Bluffs to St. Louis, than it does to haul it from Kansas City to St. Louis?

A. I don't remember the relative distances.

Q. They are both Missouri River points, are they not?

A. It presumably costs more to haul it from Council Bluffs; the haul is longer, as I remember it.

Q. Are you familiar with the question of rates for which your Company hauls freight between Missouri and Mississippi River points?

A. No, sir.

Q. Don't you know, as a matter of fact, that the rates between Mississippi and Misouri River points are the same?

A. No, sir. I don't see a rate in a year.

Q. You don't?

A. No, sir.

Q. It is a *matter* that you can send a car of wheat from Council Bluffs to St. Louis for the same price you could from St. Joseph to St. Louis, would you say that the cost in proportion to the revenue derived from handling those two shipments was the same?

A. I should think that would depend upon the revenue.

Q. I say, cost in proportion to the revenue?

A. The longer haul, especially if it include the shorter
499 haul, must be a larger cost. On the question of cost in the State of Missouri, I should say the cost from St. Joseph would be greater than from Council Bluffs.

Q. Haven't you terminals at Council Bluffs, or Omaha?

A. They are not in the State of Missouri.

Q. Certainly not; but haven't you terminals there?

A. Certainly; but I am talking about the cost in the State of Missouri; the cost presumably, (from what appears to be commonsense and everybody, whether a railroad man or not, can draw the same conclusion), the cost would be greater for a shipment from St. Joseph to St. Louis than from Council Bluffs to St. Louis.

Q. The cost would be greater?

A. The cost in the State of Missouri would be greater.

Q. Why?

A. Because of the terminals at St. Joe. In one case there are two terminals, and in the other but one.

Q. What has the terminal at St. Joe got to do with it?

A. Because that terminal is in Missouri.

Q. What has the terminal to do with it?

A. The terminal is part of the cost.

Q. How does the Council Bluffs shipment have anything to do with the terminal at St. Joe?

A. It hasn't anything to do with it, and that is why the expense of that shipment would be less.

Q. Does your shipment from Kansas City to St. Louis have to be handled at the terminal at Kansas City?

A. Certainly.

Q. And it also has to be handled at St. Louis?

A. Certainly it has.

500 Q. Do you make any extra charge for handling freight at the terminals?

A. Not unless it is included in the rate. We may add a switching charge.

Q. Don't you add a switching charge at Kansas City?

A. Perhaps they do; I don't know.

Q. Your answer is based on a switching charge being made?

A. I say the expense in Missouri is naturally and presumably greater in the case of a shipment from Kansas City to St. Louis than from Council Bluffs to St. Louis.

Q. Do you contend it costs any more to haul a car of freight 250 miles in the State of Missouri, than it would to haul a car of freight 250 miles, 125 miles of which distance is in the State of Iowa and 125 miles in the State of Missouri?

A. Presumably not, taking the whole haul. It would depend upon the whole circumstances, the terminals, and the conditions of the country. But that does not affect the answer, that so far as the expenses in Missouri are concerned, it is reasonable to conclude that the shipment from Kansas City to St. Louis, which has double terminals, will cost the Railroad Company more to haul than the shipment from Council Bluffs or Omaha to St. Louis.

Q. You mean that the railroad has to apportion, as a part of the expenses for the handling of that freight, the maintenance of equipment at both ends? Do I understand you correctly?

A. If both ends are in Missouri?

Q. Yes.

A. Certainly.

Q. Then the fact that you have terminals in Missouri, at
501 St. Joe, Hannibal, St. Louis and Kansas City, tends to increase the cost of traffic, and not lessen the cost of traffic: Is that the logic of your answer?

A. I do not follow that question. If it was a question between two terminals in Illinois, the same thing would apply. If it were two terminals in Iowa, the same thing would apply. The great expense is on the terminals.

Q. The great expense is on the terminals?

A. That is my judgment.

Q. You have terminals in Chicago?

A. Very well; but they are no part of the Missouri expense.

Q. If you would ship a car from Chicago to Kansas City, that would be an inter-state shipment, of course?

A. Yes.

Q. And you would have the terminal expense in Chicago and the terminal expense in Kansas City?

A. That is true.

Q. In determining how much of what you got for that inter-state shipment, you would only deduct the expense of the Chicago terminal, in determining the part to assign to Missouri?

A. Excuse me, I do not. Either I am very stupid in explaining, or I cannot make you understand.

Q. I was not making a statement; I was asking you a question.

A. I merely say that in the case you cited, that the expense incurred in the State of Missouri, where both terminals are in
502 Missouri, is presumably greater than the expense incurred in Missouri on the inter-state shipments, where only one terminal is in Missouri.

Q. I understand you perfectly. I am not trying to cavil with you on that. I ask you if in apportioning the amount of inter-state shipments between Kansas City and Chicago to Missouri, what expense of terminals do you deduct, if any, in determining the amount to be assigned to Missouri?

A. We consider the cost of that shipment in Missouri and such expenses as are local to Missouri, or practically local, as described to you in showing how we arrived at the Missouri expense. Now the terminal at Chicago, therefore, is out of the question on that shipment. It does not enter in any way into the expense in Missouri. Is that clear?

Q. I understand what you mean by your answer. If a shipment went to Brookfield, instead of Kansas City or Chicago, would you make any deduction for the expense of the terminal in determining the amount of money you got for that shipment from Missouri?

A. I don't understand your term "deducting."

Q. In apportioning what you got for inter-state shipments from Chicago to Brookfield, did you make any deduction on account of the terminal in Chicago, in the portion that goes to Missouri?

A. It has already been stated that that has been divided on a mileage basis, but this is the first question I have understood you to ask about apportioning the earnings. All the rest have been about expenses. I understood you all the time to be asking about expenses; now you ask about earnings.

503 Q. How about expenses then?

A. Expenses then are expenses that are local. For instance, the Brookfield terminal expense would be a Missouri expense. If that train that carried that shipment started at Hannibal, then the expense of the train and engine service would be *the* between Hannibal and Brookfield, Hannibal being supposed to be the dividing

line. If that train came from Illinois and went over to Brookfield, the expense of that train for that run would be apportioned on a mileage basis, largely. Do I make that clear?

Q. I understand your answer. What percentage of business handled by the local freight trains is inter-state business and what is State business?

A. I don't know, but I should say a very large portion of it was intra-State business.

Q. If you have a shipment from Chicago to any town between the terminals of a freight division, how is that shipment handled?

A. That is an operating question. I don't know. It would depend, probably, upon the amount there was of it. It might be carried in a through train, if there was a carload of it, and that car cut out.

Q. Well, the usual way of handling a shipment of that kind, which would come upon what you call a "through" train, would be to cut it out for the local train to handle, at the beginning of the Division, wouldn't it?

A. No, sir, I don't understand that is the general rule. But that is entirely outside my Department, and I really have no knowledge on that point.

504 Q. Then you don't know what kind of business local freight trains do do?

A. Yes, sir, at least I feel satisfied I do. Of course, this whole question is one of opinion, in my judgment. The great bulk of the business the local freight trains in the State of Missouri do is intra-state business.

Q. The large towns in Missouri are mostly upon the Rivers, are they not?

A. The largest are, yes.

Q. Both in Missouri and in the States that border upon it?

A. Well, Springfield, Peoria—it is on a river, but hardly a navigable one, for your purpose. Of course Chicago is on the Lake, which is equivalent to that.

Q. Isn't it a fact that upon both the east and the west borders of Missouri, there is far greater density of population in the space of a few miles to the east and the west of the Missouri and the Mississippi Rivers, than there is in the other parts of the State, and a far greater density of towns?

A. I presume that is so, but I know no more about that than you do—and not so much. I don't know the population of a single town in the State of Missouri, except what would appeal to a man of moderate education to be the fact.

Q. Don't the local trains pick up cars and carry them to the Division points—cars which are destined to other States?

A. Yes, sir, I should say without doubt they do, in some cases.

Q. And don't they distribute empty cars for inter-state shipments?

A. I presume so. We have officers whose business that

505 is. That is not my business at all. This is only a general supposition I am giving you.

Q. I don't care to talk to you any more, then, about that, if you don't know.

A. The great bulk of the business is intra-State.

Q. How do you know that?

A. Just where I got that information, I don't know. But that is my natural supposition.

Q. That is your supposition?

A. I have my traveling Auditors, who go into the different Divisions, and in and about the freight yards.

The MASTER:

Q. Do I understand you to say that in your judgment the great bulk of the revenue derived to the road for the carrying of freight in Missouri, is derived from the carriage of freight only in Missouri, and not inter-state freight? Is that what you mean?

A. No, sir, I did not make that statement.

Judge SPENCER: He was talking about what character of freight they carried.

The MASTER: He spoke about the great bulk of freight in Missouri being local.

Gen'l HADLEY: He said the local freight was carried on local freight trains.

The MASTER: There is the difficulty. We have understood the word "local" when applied in this case to freight, to mean freight that originated and terminated in the State of Missouri; that is, local freight.

Judge SPENCER: He has been using the word "intra-state,"
506 instead of "local."

The MASTER: What would you say to this question, broadly speaking:

From which class of freight would the Railroad derive its largest revenue in the State of Missouri; the freights that are purely local, or the freights that are inter-state?

A. The freights that are inter-state, as shown on page 1 of Exhibit 1.

Q. That is what I understood all the time, and I was getting confused.

Gen'l HADLEY:

Q. What is the comparison between the rates at which you handle local freights, as compared with the rates at which interstate freights are handled?

A. I don't know.

Q. Do you know of any case where the inter-state freight rate is less than the sum of the locals?

A. I don't know. As I said before, I don't see one rate in a year. Our traffic people make the rates, and they, no doubt, can tell you what you want upon that point.

Q. If it is a fact that the general average at which State freight is carried is much higher per ton per mile than the rates at which interstate freight is carried, ought that element not to be taken into con-

sideration in determining whether there is a loss or profit in the handling of State freight?

A. You mean as applied to the whole question?

Q. (Previous question read.)

I have made the question clear; or if there is any ambiguity indicate it?

507

(Previous question read to the witness.)

The MASTER: If you don't fully comprehend the question, say so, and he will, perhaps, frame it another way.

A. I understand the question, but am trying to figure out how to answer it.

The profit or loss on local business has nothing to do with the relationship between the local and the through rates.

Gen'l HADLEY: I would like to have the question read again. The answer is not intelligent to me, in response to the question.

The MASTER: Present it in a different way, then.

Judge SPENCER: I understand that if the local rate is higher than the through rate, ought that not be considered in arriving at the loss or profit on the local business? I should not suppose there would be any question about that. I don't think the witness understood, because he cannot help seeing that. That is merely a matter of calculation.

Gen'l HADLEY: Let me put it this way: In making your computations as to the loss upon the local business, under your theory of calculation, you have assumed that the revenue derived from the handling of State freight was the same per ton per mile, as the revenue derived from the handling of through freight, per ton per mile?

A. That is practically the way it works out.

Q. That is a fact within your knowledge, that the average

508 of State rates, per ton per mile, is much higher than the average interstate rate per ton per mile?

A. My presumption is that it is much higher.

Q. I ask if that element should not be taken into consideration in determining whether there is a loss or a profit; namely, the higher rate at which such freight is handled?

A. I still contend that the other answer is a direct and straight answer to you. But I see what you mean. You mean in relation to the proportion of two kinds of business, and in that way Judge Spencer is exactly right. Of course, if the local earnings are higher per ton than the earnings of the interstate freight, then the relationship of the two is affected by that fact. But the loss or profit on the local business by itself, is not dependent upon the relationship of the rates on the local and the rates on the interstate business.

Q. To go further along that line: the freight that is handled in less than carload lots is more expensive, and costs more to the railroad company, than the handling of freight in carload lots?

A. That is our belief.

Q. And you charge a much higher rate for freight in less than carload lots than you do for freight in carload lots?

A. Freight in less than carload lots ordinarily takes a higher rate.

Q. And usually takes two or three times the highest rate?

A. I don't remember the proportions.

509 Q. Then, whether there is a loss or a profit on handling freight in less than carload lots, would depend upon the relationship between the expense of handling that freight and the revenue derived from it, wouldn't it?

A. I confess I do not want to admit anything here that I do not mean; and you asked me whether the profits or loss depend upon a certain thing; and I simply answer, No; and that is not what you want. But the way you put your question that is a direct answer to it.

Q. That is your answer; very well. Can any distinction be——

A. I haven't made any answer to that last question.

Q. I thought you answered it, No.

A. No, sir, I did not.

Q. Answer it any way you want.

(Previous question read.)

A. You mean to ask whether the profit or loss on local business depends upon the relationship of the local to the interstate rate?

Q. I cannot make my question any clearer than I have asked it.

A. Then I don't understand it.

Q. Can any distinction be made between the cost of doing state business and the cost of doing interstate business, where both classes of traffic are handled in carload lots, either on a long haul, or a short haul?

A. During that part of the journey they are both handled together, there is no way of distinguishing them.

510 Q. Do you know the amount of less than carload freight that is involved in the interstate freight, and the amount that is involved in the State freight?

A. No sir.

Q. Could you ascertain that?

A. Not without a tremendous amount of work.

Q. How much time and work would it take to get the amount of freight in less than carload lots, which is included in the interstate freight; and the amount of less than carload lots which is included in the State freight, for one month in the year 1905?

A. That is pretty hard for me to tell. I should think it might take twenty men a week. But that is a very rough kind of a guess. I could not tell until they got to work at it.

Q. If you found that it would take one man a week or ten days to determine the amount in tons or pounds, would you be willing to furnish those figures?

A. Certainly, if we have the records.

Q. Isn't there a large amount of interstate freight that has to be rebilled at St. Louis, Hannibal, and other Missouri River points, which is in less than carload lots?

Judge SPENCER: We will have a freight man on the stand next. Of course, there is no objection to asking Mr. Sturgis these questions.

Gen'l HADLEY: If he does not know, we will not ask him.

Judge SPENCER: We will have a man here next, who knows it so much better.

A. I should say that from a western state to Kansas City
511 and St. Joe there was comparatively little. From the eastern states, I don't know. There is a good deal that is rebilled there, but whether it is rebilled in East St. Louis or St. Louis, I cannot tell you.

Q. It would not make any difference, so far as the expense is concerned, would it?

A. For Missouri?

Q. Yes.

A. Yes.

Q. To the railroad company?

A. It would all be expense to the Company, whether made in St. Louis or East St. Louis, provided it was done by us.

Q. And it would be an increased expense on interstate traffic?

A. Re-billing is more expensive than if it is not re-billed.

Q. Certainly. Isn't there a large amount of State business that is through business? I mean, a large amount of State business that originates, say, in St. Louis, and goes to Kansas City; or originates in Kansas City or St. Joe, and goes to St. Louis?

A. It is a large amount of business; but how much of the whole I do not know; or whether a large per cent of the whole, I do not know.

Q. Of course, such business would be handled just as cheaply as any interstate business could be handled, because it would be on a through freight?

A. It certainly would not be handled as cheaply as freight coming from, say, Nebraska to Chicago, and not being handled
512 at any terminal in the State of Missouri. It might make the same mileage in the State of Missouri, but the interstate shipment would be very much cheaper.

Q. To handle?

A. To handle.

Gen'l HADLEY: We discussed that terminal matter awhile ago.

The MASTER: Yes, we have had enough on that.

Gen'l HADLEY:

Q. How can there be any apportionment of expense between the maintenance of equipment, or roads and structure, between State and interstate freight?

A. There could not be any accurate apportionment, and we do not attempt to apportion it. We take the position, right straight through, which I think is admitted, that you cannot apportion expenses to local freight.

Q. Isn't what you call "local freight" usually handled with much lighter equipment than what you call "through" business?

A. The way freights are entirely a lighter equipment and they handle the bulk of the local business.

Q. Of course, the lighter the trains, the less the wear would be upon the equipment, wouldn't it, Mr. Sturgis, and on the track?

A. On the track, yes, I should say so.

Q. And yet in apportioning the expense for maintenance of way, you have apportioned three times as much of the expense to State business as you have to interstate, haven't you?

A. That is my opinion; that the expense is three times as great.

513 Q. Isn't it considered, as a railroad proposition, that the most profitable roads are those that do the largest local business?

A. I don't think that can be put down as a general proposition.

Q. Your answer, then, would be that the most profitable roads are those that do the largest interstate business?

A. What I had in mind was the case of the Alton, which has always been supposed to be a largely local business, and of the Burlington, and of the two I should say the Burlington was the more prosperous. I do not admit it as a general proposition, but I do not know.

Q. You do not know. Then that is the best answer.

A. I do not know.

Q. Are you familiar with the method of distributing empty cars on the Burlington system in the State of Missouri?

A. No sir.

Q. Do you know whether there is any difference in the method by which that is done for interstate, as distinguished from State business?

A. I do not know.

Q. Are you familiar with the Louisville & Nashville Railroad?

A. I have been over parts of it.

Q. Have you been over it in the State of Kentucky?

A. Yes sir. I am not familiar with the road in any sense of understanding its operation, or anything of that kind. I have merely travelled over it, as a passenger.

514 Q. Are you sufficiently familiar, with it, Mr. Sturgis, to institute any comparison between its business, or method of hauling business, in the State of Kentucky, and the Burlington method in the State of Missouri?

A. No sir.

Q. In reference to the revenue-producing qualities of freight trains, as distinguished from passenger trains, do you know what the practice is with reference to the abandonment of freight trains if there is not sufficient revenue to make them revenue-producers?

A. I don't know what the rule is.

Q. You said this morning that if you could haul the full capacity of a passenger train, they would be better revenue producers than freight trains. Did I understand you correctly?

A. My recollection is that I said there was more profit in each additional passenger—that is, more profit for each dollar received from each additional passenger, where extra care and extra trains were not necessitated by his riding, than by additional freight.

Q. But passenger trains run, whether they have a single passenger, or if they are filled to their capacity, don't they?

A. Yes sir.

Q. They run on a schedule?

A. Yes sir.

Q. Do you know it to be a fact that freight trains are not run unless they do have freight enough to have them revenue producers?

515 A. Often freights are run that do not pay their cost. There may not be freight enough at the terminal to warrant that train's going out, and yet it may pick up some. I don't know, really, anything about that.

Q. That is an operating department question?

A. Yes sir.

Q. All these questions relating to the manner in which State and interstate freight is actually handled by the road, are operating questions, with which you are not familiar?

A. Operating or traffic.

Q. And your knowledge of the increased cost, if there is any, comes simply from the conferences you have heard, and from examination of books and papers?

A. And some experience on the road.

Q. Such as you have disclosed here?

A. No sir, other. I have been in the station service, on both ends of the line, and I was pay-master for four years, and that took me out on the road for one year entirely, or over a year out of the four. Of course, I picked up a great deal of information, and general knowledge from that experience.

Q. How the freight is actually handled, in the case of the Burlington system in Missouri, you do not feel sufficiently familiar with to testify concerning?

A. I would not be willing—I do not feel sufficiently familiar to testify as to the rates.

Q. Are you familiar with the question of what items of expense of these different classifications that your road has, are in-

516 creased by the handling of State business, if at all?

I. I have a pretty good idea on those propositions.

Questions by Mr. LADD:

Q. Mr. Sturgis, you have explained, I think very satisfactorily, what is meant by revenue on a train mileage basis; but I am not quite certain that I understand it, or that the record is entirely clear on that point: here in Missouri, we will say, is a passenger train which runs ten miles; there is another passenger train which runs twenty miles. There is a freight train which runs thirty miles, and there is another freight train which runs forty miles. These trains all run in Missouri. Now, we will say that you have Two Hundred Dollars of operating expenses, which you wish to apportion upon a train mileage basis. How would it be apportioned?

A. Your first passenger train runs ten miles; that is ten passenger train miles. The next one runs twenty miles; that is twenty pas-

senger train miles. Making a total passenger train mileage of thirty miles. That is one factor. You have one freight train which runs thirty miles, making thirty freight train miles; another running forty miles, making forty freight train miles. That makes a total of seventy freight train miles. That is another factor. The two factors now are thirty passenger train miles, and seventy freight train miles. Therefore, you use those two in determining the division of the Two Hundred Dollars, and it would make Sixty Dollars passenger, and One Hundred and Forty Dollars freight.

Q. It is three-tenths and seven-tenths?

517 A. Yes sir.

Q. It doesn't make any difference whether it is a freight train or a passenger train; and it doesn't make any difference—that is, the amount of revenue which any of those trains earn is entirely immaterial?

A. Entirely immaterial. It merely means that the freight train carries revenue-freight in distinction to a freight train that carries Company material.

Q. It is a train that earns money?

A. Yes sir.

Q. When you speak of revenue train mileage of one State, as distinguished from revenue train mileage from another State, you talk of the freight trains and of the passenger trains in one State, and add together the total number of miles which they travel?

A. Yes, sir.

Q. And compare it with the similar total of miles which all the other trains in the State have travelled, and then you arrive at your proportion; that is what you mean by revenue train mileage?

A. You arrive at the relationship of the train miles in the two states; but I don't know of any case where it is applied here.

Q. I think you said that in perhaps some minor instances it was applied, in some items of expense.

I think you said this morning that you could ascertain from your books the total tonnage of intra-state freight, and the total tonnage of interstate freight, in Missouri, for the year 1904: that it

518 could be ascertained?

A. I made some inquiries, and we cannot do it. We haven't the records to do it.

Q. Couldn't you do it from the way-bills?

A. We haven't the way-bills to do it.

Q. Where are they?

A. We haven't those of that period.

Q. For 1905, then?

A. For 1905 we can give it to you for the State of Missouri, I believe.

Q. That is all I want.

A. We can give it to you for the State, as a whole, I believe, but not for the local.

Q. For the State of Missouri, as a whole?

A. Yes sir, the State of Missouri, as a whole.

Q. Can't you give us for 1905, the tonnage of the inter-state

freight, as distinguished from the total tonnage of all the interstate business for 1905?

A. No sir.

Q. Couldn't you do it from the way-bills?

A. We haven't them all, to do it with.

Q. Where are they?

Judge SPENCER: Some of our records are destroyed, from time to time. Of course, everything bearing on this suit has been figured up. If we have the records, we will give you any computations you want.

Mr. LADD: We want to know if we can get it.

Judge SPENCER: You can, if we have the records.

519 Mr. LADD: I want to find out if you have the records.

Judge SPENCER: We will ascertain, and let you know.

Mr. LADD:

Q. Could you give me, after investigation, the tonnage of the intra-state traffic, as distinguished from the interstate traffic, in the State of Missouri, for the first six months of the year 1906?

A. No sir.

Q. Why not?

A. We haven't the records to do it.

Q. You haven't the records?

A. No sir.

Q. What would you need, in order to give us that information?

A. We would need the way-bills.

Q. Where are the way-bills?

A. We haven't them. Some of them have been destroyed. We have some of them, but not all of them.

Q. How long do you keep way-bills?

A. We keep way-bills for various lengths of time.

Q. You have had them?

A. We have had them.

Q. They have been in the possession of the Company?

A. Yes sir, they have been in the possession of the Company.

Q. Is that true of the way-bills for the latter part of 1905, also?

A. That is true of the way-bills for the latter part of 1905, also. Yes sir.

520 Q. Some of them have been destroyed?

A. Yes sir.

Q. The Company has taken no pains to preserve them?

(No answer.)

Q. And they constituted the only source of accurate knowledge as to that tonnage?

A. The only source from which we would get the detail of tonnage that you asked for.

Q. That is the only source the Company has for this information?

A. The only source.

Q. And you have permitted them to be destroyed?

A. Exactly.

Q. Can you ascertain from your books, or any papers in the pos-

session of the Company, the number of ton-miles of intra-state freight moved by the Company in the State of Missouri during the year 1904?

A. No sir.

Q. Can you do it for the year 1905?

A. No sir.

Q. Can you do it for the first half of the year 1906?

A. No sir.

Q. Why not?

A. We haven't the way-bills.

Q. It is necessary to have the way-bills?

A. It is necessary to have the way-bills.

521 Q. The same way-bills you were speaking about in answer to two or three previous questions?

A. Yes sir.

Q. And you say they have been destroyed?

A. Some of them have been destroyed.

Judge SPENCER: Not only in Missouri, but in all states. I don't want to leave the inference that we destroyed them simply for Missouri.

Mr. LADD: I don't care if you destroyed them for all the States, but I say you should not have done it pending this investigation.

Questions by General HADLEY:

Q. What did you make up your statement of gross earnings in Missouri from?

A. From the way-bills.

Q. What did you do with the way-bills, after making up this statement?

A. Some were destroyed.

Q. Were some destroyed before you made up your statement?

A. No sir.

Q. Where are your way-bills for 1906?

A. Some of them are in our keeping, and some have been destroyed.

Q. If you ever have to make up a statement for 1906, you would be unable to do it; is that right?

A. Certainly, just as unable as to do it for 1890 or 1880.

Q. How did it happen that you kept all the way-bills for 1904 and 1905, up until after you made this statement?

522 A. Because at that time we were not destroying them as promptly as that.

Q. Did you destroy any of the way-bills for 1904 and 1905, until after this statement, marked "Exhibit 1," was prepared?

A. We did not destroy them until after the statement had been prepared and examined by your experts.

Q. Since then, you have destroyed not only those way-bills, but you have also destroyed the way-bills for 1906?

A. Some of them, yes sir.

Q. What did you do it for?

A. We didn't want them.

Q. Why didn't you destroy all of them, then?

A. Some we did want.

Q. Did you adopt a new system immediately after this litigation arose, Mr. Sturgis?

A. We did not adopt any system on account of this litigation, whatsoever.

Q. How did it happen that during the two years, 1904 and 1905, all the way-bills were preserved, until this statement "Exhibit 1" was prepared, which was done, I understand, in the last few months?

A. We decided that certain classes of way-bills we did not want in our files, and we took them out and destroyed them, all over the road, without any reference to this case whatsoever, or any bearing upon it, because we understood that your experts were through examining that part of our statement.

Q. What classes did you destroy?

523 A. What classes of way-bills?

Q. Yes.

A. We destroyed way-bills that had certain notations upon them.

Q. What were those notations?

A. Those were notations on authorities for rates.

Questions by Mr. LADD:

Q. Can you give me the amount of the tonnage for the interstate freight in the State of Missouri for the month of August, 1906?

A. For the month of August, 1906, I think we will be able to give you, at all events ultimately, when we get the bills in shape, to go to work upon them. At the present time, they are in process of our regular work and are not available for use for a statement of this kind.

Q. Can you give it to us for July, 1906?

A. I don't think we can, for July.

Q. Why not?

A. Because I think some have been destroyed. I have forgotten just now what the date was where we drew the line, but I do not think we can furnish it for July.

Q. When did you destroy them, the last of July?

A. Hardly, since the last of July.

Q. Can you ascertain from your books, or any papers in possession of the Company, the number of ton miles of intra-state freight carried by your Company in Missouri, for the months of July or August, 1906?

—. I think we will be able to compute it for you for the

524 month of August.

Q. From what?

A. From our way-bills.

Q. Will you do it?

A. Yes sir, when we can get at it. It will take some time, because the way-bills are in process of our regular work, and of course we cannot stop that. That is impossible. We will have to wait until the way-bills are through the regular work and are in the files, and then we will be able to do it, if you desire.

Q. I appreciate that. And will you also do it for carload lots, and less than carload lots?

A. That is a pretty large order. I cannot tell you out and out if we can give it to you. It will depend upon our officers. I will be glad to get an estimate of what it will cost, and see if they are willing to give it.

Q. Do I understand that it is going to depend upon the matter of cost to your Company, whether you will give us this information or not?

A. I don't know what the President will decide.

Q. You simply mean that you cannot speak for the President?

A. I cannot speak for the President on a matter that will involve too large a cost.

Q. I should also like, for July and August of this year, the freight earnings in Missouri, local and inter-state?

A. Please give me the whole request.

Q. I should like the amount of your freight earnings for
525 Missouri for the months of July and August, separately, both local and inter-state.

I should also like the tonnage, both local and interstate, for those two months, and the number of ton miles of freight, both local and interstate, for the same months.

Also the amount of each in carload lots and less than carloads lots.

Mr. HAGERMAN: I don't know how much work he is calling upon us to do. We may prefer that their experts do that work themselves, instead of our doing it.

Mr. LADD: You can refuse, or not, to give it to us, just as you like.

Mr. HAGERMAN: I would like to see the magnitude of the work, before deciding whether you can compel us to do it. But we will either do it, or accord to you or your experts the facilities to do it.

Mr. LADD: It is not for us to do it. My notion is that if you undertake to make a showing here, it should not be a partial but a full showing.

Judge SPENCER: Unless you know the facts, you should not criticize in a public meeting. Whatever has been done, is done under orders of Counsel.

At this point, the Master adjourned the further hearing of testimony herein to tomorrow, Friday, September 21st, 1906, at ten o'clock, A. M.

526 CHICAGO, ILL., *Sept.* 21, 1906.

Met pursuant to adjournment as above, on Friday, September 21, 1906, at ten o'clock A. M., present parties as before, when the following proceedings were had:

Cross-examination of Mr. C. I. STURGIS (continued).

By Gen'l HADLEY:

Q. During the cross examination yesterday you were requested to furnish various plats and figures: Have you a list of what you were

asked to furnish, and have you that which you were asked to furnish?

A. No, I haven't them completed yet; they are working on them.

Q. Have you any portion of them completed?

A. I shall have to find out. I gave my clerks certain figures to turn out, and they have not been turned in yet.

Q. Have you checked up that passenger and freight expense for the entire system?

A. No sir, that is what they are working on, to account for the difference between the two.

Q. All the rest of the information I asked you to furnish is now in course of preparation?

A. Yes, that which was asked for yesterday afternoon. I turned it in several times, you remember; certain information you asked for. I have some of that information here. You asked for a statement of the gross earnings, operating expenses and taxes of the Railroad Company and the Railway Company, for the years ending
527 June 30, 1901 to 1905, inclusive; and the Master suggested that they be put on type-written sheets, so he could have a copy also. I have that statement here. I want to explain about it. The figures ending June 30, 1901, are for the Railroad Company. Then are given the figures for the following three months, to October 1, 1901, which are for the Railroad Company; after which the Railroad Company ceased to operate, and the lease went into effect, which makes it necessary to split up that year. Then follow the remaining nine months of that fiscal year, as the figures of the Railway Company, and after that it is regular for each fiscal year.

The paper referred to is marked "Exhibit 5", and is in the words and figures following to-wit:

528 Chicago, Burlington & Quincy Railroad Company.

	Year ending June 30, 1901.	% op. exp. to gr. e'gs.	3 months to Oct. 1, 1901.	% op. exp. to gr. e'n'gs.
Gross Earnings....	$49,655,066.63		$14,263,107.19	
Oper. Expenses ...	32,072,237.33	65	8,422,620.03	59
Taxes	1,543,476.24		201,995.54	

Chicago, Burlington & Quincy Railway Company.

	Nine months 10/1/01-6/30/02.	% op. exp. to gr. e'gs.	Year ending June 30, 1903.	% op. exp. to gr. e'gs.
Gross Earnings ...	$38,647,811.26		$61,647,506.72	
Oper. Expenses ...	24,848,860.14	64	37,742,439.23	61
Taxes	1,357,687.09		1,748,095.32	

	Year ending June 30, 1904.	% op. exp. to gr. e'gs.	Year ending June 30, 1905.	% op. exp. to gr. e'gs.
Gross Earnings ...	$64,011,468.18		$65,162,858.02	
Oper. Expenses ...	41,423,906.14	65	41,479,169.43	64
Taxes	1,862,181.53		1,840,627.35	

General Auditor's Office, Chicago, Sept. 20th, 1906.

Exhibit 5.—September 21, 1906.

529 Questions by Mr. LADD:

Q. You stated in your direct examination the other day that upon the basis of the expenses in proportion to earnings of the local freight business in Missouri being three times as great as the expense of doing the freight business of the State, the expense of that local freight business for the year 1904 would be $3,124,652.40: upon the same basis what would be the expense of doing the local freight business in the State for the year 1905? I believe that question was not asked you.

A. I do not recall that. The figure is $3,480,833.17.

Q. Upon that theory, was there a loss or a gain in doing the local freight business of the State during that year, and if so, how much, if either?

A. Using the basis of computation shown in Sheet Two of Exhibit 1, and substituting the cost on the basis described, shows a deficit for the year of $2,002,289.51, instead of the net of $14,204.68 shown on said Sheet Two of Exhibit 1.

Q. In reaching that result did you take the amount shown on page two of Exhibit 1, of $1,478,543.66 as the total receipts from the local freight business?

A. Yes sir.

Q. In that estimate did you include, as a part of the expenses, the taxes shown on page 1, amounting to $198,514.86, and the proportion of rental shown on the same page, $2,893,614.75?

(As corrected from $2,974,501.50.)

A. Yes sir.

Q. Now, if you exclude the proportionate rental as part of the expenses, what would be the result, on your theory of
530 three to one?

A. I have figures excluding the taxes, also, but I haven't them excluding the rental only.

Q. Exclude them both, then.

A. The figure I am now going to give is excluding taxes and rental entirely; not only three times, but even once.

Q. You do not take them into the calculation at all, as part of the expenses: That is what I understand.

A. You are right. We then get for the expenses $2,517,356.43, resulting in a loss or deficit of $1,038,812.77.

Q. In reaching the figures $3,480,833.17 as the expenses for 1905, including the rental and taxes, you charge the local freight earnings with the same proportion of the taxes and the rental that you do of all other expenses, don't you?

A. Yes sir.

Q. You testified that in your judgment the proportion of the operating expenses to earnings on the local freight business was from three to seven times as much, in proportion, for the local freight, as for all the freight in the State?

A. Yes sir.

Q. What would be the result for 1904, if it were seven times as much?

A. I will have that worked up for you. I haven't the figure- here.

Q. I would like to know what it would be for 1904 on the basis of its being seven times as much, both including and excluding rental and taxes; and the same figures for 1905.

531 A. I will get those.

Q. What is the average ton of haul of local freight in the State of Missouri, for the year 1904?

A. I don't know.

Q. Will you please ascertain that, at the same time?

A. No sir, I cannot do it. It is impossible.

Q. Why?

A. Because we would have to have the tons for one mile, and the total tonnage, in order to do it.

Q. Can't you get it?

A. No sir. If we had the papers, it would be a large job to work it up. We would have to go to the way-bills, in other years. It is one of the resulting calculations from finding tons and ton miles.

Q. And you have not the way-bills?

A. No sir, we have not the way-bills. That point of not having that information, I believe, is thoroughly understood. It has been touched upon several times.

Q. What?

A. Not having that information has been touched upon several times. The figure you ask for is simply a figure you would get if you knew the local tonnage, and the local tonnage for one mile; and the fact that that was not obtainable has already been touched upon several times.

Q. Is that any reason why I shouldn't ask you a question?

A. No sir, I was only explaining. I wasn't criticizing you for a minute.

532 Q. Mr. Sturgis, have you any records in your office from which you could ascertain the average revenue per ton mile from local freight on your whole system, and the average per ton mile of all the freight on your whole system?

A. We have the figure that would give us the average revenue per ton mile for the whole system.

Q. Can you give that to me now for 1904?

A. I could get it, if it will answer your purpose, for any fiscal year, I can give you that.

Q. Do you think that would afford us a fair average for the purposes of this case?

A. Yes sir, I think it would. Take it for June 30.

Q. The fiscal year ending June 30, 1904, and the fiscal year ending June 30, 1905.

The MASTER: What do you mean by ton mile of local freight for the whole system? Do you mean freight which are local to each separate state?

Mr. LADD: General Hadley says what he would like is, freight that is local to the system; that which begins at one point on the system and ends at another point on the system.

Mr. HAGERMAN: Can't you use some other word than "local"?

A. I answer your question by stating that I could not give that figure.

Mr. LADD:

Q. The question was a little different.

A. I understood the question, and stated we did not have the local figure, but that we did have, and would give you, the figure for the entire system, on local business.

Q. Will you please give me that for the fiscal years, beginning with June 30, 1901, and ending with June 30, 1906.

533 A. Let me begin with 1903, if you please, because we have the previous year split into periods of three and nine months.

Q. Very well, omit the year ending June 30, 1902; give me for the year ending June 30, 1901, and that will be satisfactory.

A. Very well.

Q. What is the average ton haul of interstate freight in the State of Missouri, for each of the years 1904 and 1905?

A. I cannot give you that separately from the whole.

Q. Why not?

A. I haven't it.

Q. Why not?

A. It has not been made up.

Q. Can it be made up?

A. No sir.

Q. Why not?

A. Because we haven't the way-bills. I will tell you just what I can give you:

I can give you the average haul on all business in the State of Missouri for the calendar years 1904 and 1905.

Q. Will you get that and give it, if you please?

A. Yes sir.

Q. Now, I understand that is all the freight moved in the State of Missouri, is it?

A. Yes sir.

Q. And you can give us the average ton of haul of all freight, without distinction, moved in the State of Missouri: that is it?

534 A. Yes sir, and also I have made some rough calculations, for my own satisfaction in my own mind, as to what would be about the average haul on local business in the State of Missouri.

Q. Will you give us those, along with the others?

A. Yes sir.

Q. That is what I asked you for.

A. I can tell you that. It is not taken from the records, but is simply a memorandum. It is somewhere between eighty and one hundred miles, or split that, and say ninety miles.

Q. Now, is that much more than a guess, Mr. Sturgis?

A. It is basing it on the distance between points, and using my judgment. It is not based on any actual figures. It is not an actual figure. It is more from experience, and judging from the distances on our lines, and the general points of distribution.

Q. It is not based on any records of actual movements of freight?

A. It is not based on actual records of movement.

The MASTER:

Q. It would be impossible, I understand, from any records in the office, to give that figure with mathematical accuracy?

A. We could not now make up that figure with mathematical accuracy.

Mr. LADD:

Q. For what reason?

A. Because we haven't the way-bills.

Q. It could be done if you had the way-bills?

A. Yes sir, it could be done if we had the way-bills.

535 Q. What is the average total ton haul of interstate freight, originating or terminating in or passing through the State of Missouri, for each of the years 1904 and 1905?

A. I cannot give it. As I stated to you, I have the figure for the whole of Missouri, but I have not the separation between local and interstate freight.

Q. This calls for the average ton haul of interstate freight.

A. As distinct from local?

Q. Of interstate freight, which is moved partly of course in Missouri, and partly out of Missouri, but which is the entire haul on your system?

A. You asked for the figure for the entire haul, and not merely in Missouri.

Q. Yes.

A. I haven't the figure, but, if I may suggest, I don't know why it should vary very much, from the haul for the entire system. No sir, it would not; because the local is in that figure.

Q. Can you give me that figure?

A. No sir.

Q. For the same reason already stated?

A. Yes sir, and also because it would be considerably more work to get it up.

Q. Have you the material with which you could get it up?

A. No sir.

Q. For the reason you have already stated?

A. Yes sir.

536 Q. What do your total operating expenses in Missouri, including taxes and rental, foot up now, after you have made any corrections that you thought proper? On the statement, Exhibit 1, page 1, originally filed here, they amounted to $11,251,724.91: certain changes have been made by you, and I would like to know what the corrected footing is.

A. $11,170,838.16; as I explained on the first day that might have been raised about $15,000, but as long as the statement had gone in, and had once been corrected in the record, we thought it hardly necessary.

Q. I will ask you if that amount of 1905 expense, $11,170,838.16, is made up in this way: $7,161,368.80 operating expenses——

A. Is that the footing of the 1904 items?

A. The footing is what you have just given me, $11,170,838.16.

A. And you asked me if they make up something, and I want to know where you get them.

Q. Give me a little time, and you will understand it.

I will ask you if this total figure of expense, of $11,170,838.16, is made up in this way: (that is, by the aggregation of the amount I am about to state:) $7,161,388.80, operating expenses; $2,893,-614.75, proportion of rental; $198,415.86, taxes; $917,418.75, replacement fund?

A. I see that in your figure, you have divided the operating expense figure, between that which has been charged for work
537 practically done, and that which has been set aside for work to be done.

Q. You mean to say, I have split the operating expenses between the first item and the last one?

A. Yes sir.

Q. I have done that.

A. And you have called the latter "Replacement Fund." On the figures given by you, are the figures that enter into the total $11,-170,838.16?

Q. You have observed that I have split the operating expenses in that way; that is true. Haven't you done it in the same way on your books?

A. There is no——

Q. Can't you answer that question? Doesn't that $917,418.75 appear in a different account, a separate account, of operating expenses on your books?

A. I can satisfy a railroad accountant in a minute, on that subject.

Q. I am not a railroad accountant. I am simply a plain common-sense lawyer for anything.

A. That makes me hesitate to explain, because it will take some time.

Mr. HAGERMAN: Explain it.

Mr. LADD:

Q. I want to ask you, before you explain, if this $917,418.75 is not kept in a separate account, by itself?

Judge SPENCER: Answer that question directly, and then make any explanation.

A. It is included in the operating expenses.

538 Q. Do you want to answer my question or not?

A. I cannot, the way you ask it.

Judge SPENCER: Now make any explanation you wish of why you cannot.

A. There are two sides of every account. There is a debit side and a credit side; the charges to operating expenses are on the debit side; the charges to operating are on the debit side. Now, if money is spent, the cash is credited, and operating expenses are debited. If the money is merely put aside, and not spent, a fund called "Replacement Fund" is credited, and operating expenses debited. In other words, whether the money is spent or set aside,

it is altogether in the debit operating expense item, and is not divided. But on the other side of the books, there is a replacement fund, showing how much has been set aside. But the operating expenses are not divided on our books between those two figures.

Mr. LADD:

Q. You have an official called the "Auditor of Expenditures"?

A. Yes sir.

Q. I will ask you, in the first place, what this $917,418.75, which is in the Replacement Fund, consists of: what are the items of it?

A. A portion of an amount set aside for the rebuilding of the Kansas City bridge; and a portion of an amount set aside for freight cars and locomotives——

Q. Can you give us the amount as you go along?

A. And an amount set aside for shop machinery and tools.

Q. How much for each?

539 A. Yes, I can give you the exact figures: $550,000.00 for the Kansas City bridge; 255,000.00 for freight cars; 91,500.00 for locomotives; 20,918.75 for shop tools.

Q. Those four items make up the $917,418.75?

A. They do.

Q. Has any of that money been expended?

A. I cannot say positively whether it has or not, but I think not.

Q. I will ask you, if the books of the Auditor of Expenditures of your system do not show now, that only the amount of $7,161,388.80 has been charged to operating expenses for the year 1905?

A. I cannot tell you without referring to them, because those charges to replacement funds may or may not go through his books. Sometimes I know I have put them through his books, and sometimes directly in the general books. However, whether they do or not, that is only one source from which the final figures on the general books of the Company come, and when they come onto the general books of the Company, they are in one lump sum.

Q. What is the duty of the Auditor of Expenditures in your system?

A. The duties of the Auditor of Expenditures is to draw off from vouchers and pay-rolls and material distributions the charges to operating accounts or construction; to approve and check all expenditures. Generally speaking, his duties are to check expendi-

540 tures. Therefore, if a part of the operating expense account is derived from a source other than expenditures, it would not necessarily go through his books.

Q. The Auditor of Expenditures is, that department of the service is, a sort of subdivision of your department? You are the general auditor?

A. I am the general auditor, and he is one of my assistants.

Q. He is responsible to you. You don't know, as I understand you to say, at the moment, what his books show as to whether this $7,000,000 is the amount of operating expenses in the year 1905; now I will ask you to look at those books, and see, if you will.

A. What I say is, I don't know whether the total figure that

appears on the general books of the Company was entirely gotten through his records, or direct from another source.

Q. Will you please look, or have some one look, at his accounts, and see whether, according to the books of the Auditor of Expenditures, the figures are not, for the expenses of 1905, exactly what I have stated, $7,761,338.80?

A. You understand he has not the final books of expenditures.

Q. Will you look at those books or not? Or will you have them looked at or not? I have some figures here that purport to be taken from your books.

Judge SPENCER: Of course, we will look at them.

Mr. LADD: I should say you should do so without any hesitation.

Q. Will you do it, Mr. Sturgis?

A. I was trying to figure in my own mind, before answer-
541 ing your question, what books they would appear on. Your expert appears to know more about it than I do.

Mr. HAGERMAN: If they can indicate to Mr. Sturgis what book it appears on, I am sure he will be very glad to do it.

The MASTER: Mr. Ladd, I don't want you to disclose your position beforehand, if it should be improper you should do so, yet at the same time, if it is not, I would like to inquire whether your position is or will be, that there should be no charge for operating expenses, unless and until the actual money has been paid out, in those expenses, repairs, betterments, and all that?

Mr. LADD: No sir, that will not be my position.

Mr. HAGERMAN: You concede it would not be unreasonable to set aside each year a reasonable sum?

Mr. LADD: As the Master has asked me, I do not contend that every penny should have been actually paid out.

Mr. HAGERMAN: I want your Honor to understand that there is always an element of wear and tear on the stuff, which is really a part of operating expense, although it really does not get to its end in one year. So, you must accumulate a fund to meet that sort of contingency.

Judge SPENCER: And there is no average for any one year.

(Previous question read.)

Mr. LADD:

Q. Will you do it?

A. That question will be answered in a minute. I have sent upstairs for the figures.

(At this point the information being brought to the witness, he answers as follows):

542 The figures in question did not go through the books of the Auditor of Expenditures, and, therefore, do not appear upon his books.

Q. What figures do you mean there?

A. The $917,418.75.

Q. That amount is all right, but if I did not ask you I intended to ask, whether the figures $7,161,388.80, do not appear upon the

books of the Auditor of Expenditures as the operating expense for the year 1905?

A. I cannot answer that until I find out. There may be some other items that go directly on the general books.

Q. Can that be ascertained?

A. Yes sir; I think I can find that out right away.

Q. It is possible that these exact figures which I last mentioned, the footings, do not appear on the books of the Auditor of Expenditures; but what I want to know is if the figures on operating expenses do not appear upon his books for that year, which, footed up, would reach that figure?

A. Now, you have struck the very point that made it difficult for me to reply before.

(Colloquy here follows.)

A. (Continued.) I have some information here now. The first question asked was for the average revenue per ton mile for the system, for the years ending June 30, 1901, 1903, 1904, and 1905, omitting 1902.

The figures are:

For the fiscal year 1901, .862 cents.
" " " " 1903, .868 "
" " " " 1904, .86 "
" " " " 1905, .84 "

543 Your next question was, the average ton haul of the system for the fiscal years ending June 30, 1904, and 1905. The figure that we have covers the revenue tons only. That is, it does not include the tonnage of our own material hauled. The figures are:

For the fiscal year ending June 30, 1904, 252.37 miles.
" " " " " " " 1905, 249.61 "

The third question was on the average length of haul of all freight in Missouri, for the calendar years 1904 and 1905. I find I cannot compute the figures for the year 1904, but for the year 1905 it was 134 miles.

Q. It includes all freight that is moved by the Burlington Company on the soil of Missouri: is that right?

A. Yes sir.

Q. I have before me a statement of the operating expenses of the Company in Missouri, for the year ending Dec. 31, 1905, which, I am informed has been taken either from the books of the Company, or from what are called "working sheets" made up by some one in one of your departments. The paper has been prepared by Mr. Fisher, the expert employed by the State. You are to examine a copy of it, and see whether it is correct.

A. Very well.

Q. This paper divides up the expenses into a great number of items, and I will have it attached to the testimony.

The paper referred to is headed "Statement of Operating Expenses in Accounts, for the year ending December 31, 1905," and is marked "Exhibit 6."

Statement of Operating Expenses in Accounts Year Ending December 31, 1905.

No.	Name of Account.	Freight.	Passenger.	Total.
	Station Service.			
1.	Station Agents, Clerks and Laborers	$344,539.37	$85,002.97	$429,542.34
2.	Station Supplies	59,633.23	9,566.38	69,199.61
3.	Station Furniture	1,018.49	991.66	2,010.15
4.	Switchmen, Flagmen and Watchmen	263,887.26	28,313.04	292,200.30
5.	Switching	251,318.34	54.50	251,372.84
7.	Telegraph Expenses	73,022.78	78,966.20	151,988.98
8.	Proportion of Operating Expenses of Terminals	6,377.81	146,616.05	152,993.86
9.	Operation of Leased Lines	49.63	.26	49.89
	Total Station Service	$999,846.91	$349,511.06	$1,349,357.97
	Train Service.			
10.	Freight Conductors	$118,354.84	.....	$118,354.84
11.	Passenger Conductors	.....	$73,381.77	73,381.77
12.	Freight Brakemen	163,370.96	.....	163,370.96
13.	Passenger Brakemen	.....	46,725.57	46,725.57
14.	Passenger Baggagemen	.....	20,211.67	20,211.67
15.	Freight Train Supplies and Expenses	20,996.88	.....	20,996.88
16.	Passenger Train Supplies and Expenses	.....	17,263.95	17,263.95
17.	Heating & Lighting Cars	426.29	35,082.49	35,508.78
18.	Oiling Cars	18,168.48	4,012.74	22,181.22
19.	Cleaning Passenger Cars	.....	41,294.50	41,294.50
	Total Train Service	$321,317.45	$237,972.69	$559,290.14

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Engine Service.

No.	Name of Account.	Freight.	Passenger.	Total.
20.	Engineers and Fireman	$354,980.28	$174,973.49	$529,953.77
21.	Engine Dispatchers, Wipers and oundhouse laborers..	74,891.39	47,295.62	122,187.01
22.	Fuel for Locomotives	550,410.84	232,329.81	782,740.65
23.	Oil, Tallow & Waste	16,098.13	9,941.02	26,039.15
24.	Other Supplies for Locos	7,334.60	5,205.35	12,539.95
25.	Water Supply	21,408.66	27,458.88	48,867.54
	Total Engine Service	$1,025,123.90	$497,204.17	$1,522,328.07

(Exhibit 6—Page 1.)

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Contingencies.

26.	Damage and Loss Freight	$124,354.29	.....	$124,354.29
27.	Damage and Loss Baggage	.....	837.69	837.69
28.	Damage to Property	8,805.18	6,948.20	15,753.38
29.	Stock Killed or Injured	3,848.23	8,105.79	11,954.02
30.	Personal Injury	38,944.17	18,107.69	57,051.86
31.	Wrecking	13,545.25	2,044.55	15,589.80
32.	Car Mileage Balance	92,134.50	4,855.90	87,298.60
33.	Hire of Equipment	3,490.07	1,396.61	2,093.46
34.	Superintendence	61,814.00	49,684.13	111,498.13
36.	Expenses Dining Cars	.....	7,427.54	7,427.54
37.	Expenses Buffet Cars	.....	176.26	176.26
38.	Other transportation expenses	606.86	584.84	1,191.70
		340,582.41	90,457.40	431,039.81
	Total Conducting Transportation	$2,686,870.67	$1,175,145.32	$3,862,015.99

Maintenance of Equipment.

39. Repairs of Passenger Cars	.....	$122,797.65	$122,797.65
40. Repairs of Freight Cars	$655,327.02	.....	655,327.02
41. Repairs of Work Cars	9,434.04	9,962.14	19,396.18
42. Repairs of Locomotives	304,057.17	145,346.50	449,403.67
43. Other Equipment Expenses	6,399.17	7,620.71	14,019.88
44. Supervision Equipment	22,135.47	23,860.69	45,996.16
Total Maintenance of Equipment	$997,352.87	$309,587.69	$1,306,940.56

Maintenance of Road and Structures.

45. Removal of Snow & Ice	7,643.83	7,169.38	$14,813.21
46. Repairs of Roadway & Track	307,969.29	311,101.94	619,071.23
47. Repairs of Tunnels	6.42	3.46	9.88
48. Repairs of Cribbing and Bulkheading	5.51	4.84	9.35
49. Repairs of Bridges and Culverts	64,546.29	67,679.07	130,225.36
50. Cattle Guards, Road Crossings and Track Signs	3,807.15	4,179.17	7,986.32
51. Renewals of Rails	21,328.92	19,971.91	41,300.83
52. Renewals of Ties	77,987.86	74,581.19	152,569.05
53. Renewals of Fastenings	8,598.69	8,468.54	17,067.23
54. Renewals of Frogs, Switches and Miscellaneous Track Material	17,530.91	16,056.55	33,587.46
55. Maintenance of Leased Lines	4.71	.....	4.71

(Exhibit 6—Page 2.)

No.	Name of Account.	Freight.	Passenger.	Total.
56.	Repairs of Fences	$6,029.25	6,430.62	$12,459.87
57.	Repairs of Snow Fences and Snow Sheds	33.67	20.74	54.41
58.	Repairs of Buildings	46,766.95	38,166.88	84,933.83
59.	Repairs of Water supply	7,529.34	8,061.78	15,591.12
60.	Repairs of Docks, Wharves, Landings and Inclines	2.64	6.22	8.86
61.	Repairs of Telegraph	11,670.62	11,357.19	23,027.81
62.	Repairs of Shop Tools and Machinery	10,633.55	16,603.95	27,237.50
	Total Maintenance, Road & Structures	$592,086.18	$587,862.43	$1,179,948.61
	General Expenses.			
63.	Traffic Department Expenses	$60,497.36	$49,181.09	$109,678.45
64.	Outside agencies	67,329.98	52,949.91	120,279.89
65.	Advertising	45.18	43,509.93	43,555.11
66.	Salaries and Expenses of General Officers	40,851.79	43,233.11	84,084.90
67.	Salaries of Clerks	77,141.33	63,409.67	140,551.00
68.	General Office Expenses	9,610.47	10,034.87	19,645.34
69.	Legal Expenses	28,488.34	28,535.56	57,023.90
70.	Rent of Buildings, Yards, Track and Terminals	36,221.33	62,565.58	98,786.91
71.	Insurance	29,241.47	17,414.43	46,655.90
72.	Stationery & Printing	38,921.90	25,471.04	64,392.94
73.	Miscellaneous	13,688.03	14,141.27	27,829.30
	Total General Expenses	$402,037.18	$410,446.46	$812,483.64

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Recapitulation.

Station Service	$999,846.91	$349,511.06	$1,349,357.97
Train Service	321,317.45	237,972.69	559,290.14
Engine Service	1,025,123.90	497,204.17	1,522,328.07
Conducting Transp'n	2,686,870.67	1,175,145.32	3,862,015.99
Maintenance Equipment	997,352.87	309,587.69	1,306,940.56
Maintenance Road and Structures	592,086.18	587,862.43	1,179,948.61
Grand Total	$4,678,346.90	$2,483,041.90	$7,161,388.80

(Exhibit 6—Page 3.)

VERTICAL IN BOOK

547 Mr. HAGERMAN:

Q. This purports to detail all the expenses, as shown by Complainant's Exhibit 1, on page 1, except the proportion of rental and taxes, and the $917,418.75, which you call "replacement"?

Mr. LADD: Yes sir.

Mr. HAGERMAN: I think the record should show this paper is offered now, and the witness questioned upon it, on the assumption that Mr. Ladd will hereafter show that the statement is correct.

Mr. LADD: The witness himself is going to examine and verify it.

Mr. HAGERMAN: Failing which, of course you will make your proof?

Mr. LADD: Certainly.

Q. In this Exhibit 6, the expenses are divided in columns, between "Freight Service" and "Passenger Service," and then the outside column is the total of both. Under the head of "Station service" there are nine different accounts shown here, numbered 1 to 9 inclusive. Now you have said that in your judgment the expenses in proportion to the earnings of the local freight service are as three to one, as against the expenses of the total freight service—at least three to one. How is it, in the item of "Station Agents," Clerks and Laborers," put down here on this account as $344,539.37? Would you say that the services of station agents, clerks, and laborers incident to the local freight service was three times as expensive as the entire freight service?

A. My general judgment upon that particular item would be that it was about six times as expensive, or more.

Q. Why?

548 A. That will require a somewhat lengthy explanation. To begin with, I believe that it may be generally stated—that is a matter of my own judgment—that ordinarily freight hauled less than fifty miles renders no net revenue whatever to the Company. That the cost of fifty miles is about one dollar spent per dollar earned. Right on the question of terminals alone, without any other count being taken into consideration, that is true. And that, as that expense is fixed regardless of distance, it therefore would follow, if my figure is right, that on the twenty-five mile haul you would lose twice what you made; on the twelve and a half mile haul, you would lose four times what you made. In other words, it takes the revenue received from a fifty mile haul to pay the expenses of the handling of freight in terminals—at least that. We will suppose that the other business, the interstate business, is half of it going right through the state, and the other half either originating or terminating in the state; If that is so, then there is one terminal expense for that which originates or terminates in the state, and there is no terminal expense for that which passes through the state. So, on an average, for a shipment, there is a one-half terminal expense on the interstate business, whereas there are two terminal expenses on intra-state, local business.

Therefore, right in that item alone, it seems to me it follows that the expense of this terminal question alone is four to one; that is,

two to one-half in that relationship. Two to one-half of one, which is the same as four to one.

549 Now, I am aware that I have stated in the beginning that I used the term three to seven times the cost of doing all business, which includes the local business. But if you take the one-eleventh of all the business as the local, which is the per cent which has been determined upon, it cuts very little figure in this argument, because it would make one-half of one percent, fifty-five one-hundredths, or fifty-six one-hundredths, or about that. It cuts very little figure on account of the small proportion of local freight to the total business of the State.

I stated on the first day that my opinion was based on general experience, and what I have read and heard about this road and other roads. My argument on the seven times was based very largely on an argument prepared by the Comptroller of the Great Northern Road, and presented in a recent case to the Minnesota Commissioners; and at least one of the Commissioners, and I think two of them, and the Secretary, told me that they were very much impressed by the strength of that argument. Judge Mills, and Mr. *and Mr.* Yapp, the statistician, told me that they considered the argument a very strong one; and it so seemed to me. That is the main basis for my argument that it might run even as high as seven times.

Mr. LADD: Of course, all this testimony as to what other people told him, or what he read, is immaterial.

The MASTER: Of course it would not be considered as evidence.

550 A. I said that simply because I stated that my opinion came from my practical experience and from what I had read. As I stated this morning, I estimated that the average haul of local freight in Missouri was ninety miles. The actual figure for all freight in Missouri, I ascertained to be, and gave in as 134 miles. We therefore have fifty percent more haul, on an average, for all business than we do from the strictly local business. And as the calculation showing that the terminal expense was four to one, was based on an even mileage, it follows, as I understand it, that the terminal expense for a corresponding haul, for the average on all Missouri business, would be fifty percent greater, that is, that is the difference.

I believe that explains my position on this station service.

Q. I wish at some later time you would figure out how much of this $3,345,539.37 ought to be charged up to local freight earnings upon your basis of six to one?

A. I will do so.

The MASTER: That would not be evidence. Isn't that making the witness argue the case?

Mr. LADD: He says the local freight expenses for the year 1905 had been so much——

The WITNESS: No, sir, I do not. I say they cannot be determined.

Mr. HAGERMAN: I don't think they should ask the witness to

make a lot of calculations which they can make themselves. The method is there.

The MASTER: My own view is that, so far as the computation that is now asked for is concerned, it is clearly and exclusively
551 argumentative; yet, at the same time, in order that there can be no question in the matter, I will not sustain the objection, and will let the witness make the calculation and submit it.

Mr. LADD: I do not expect him to do it now. He will have plenty of time to do it before we meet again.

The MASTER: At the same time, I do feel that that is a matter which should go to the experts and Counsel on the other side, to make their calculations from the statements furnished.

Mr. LADD:

Q. The total expenses, under the head of "Freight," according to this "Exhibit 6," are footed up $4,678,346.90?

A. That is the freight proportion.

Q. And "Passenger" expenses are footed up $2,483,041.90; the two together making the figure which was mentioned before $7,161,388.80.

Now the next item, No. 2, under the head of "Station service," is "Station supplies:" how much more ought to be charged on that account to the local freight service than to the total freight service, in your judgment?

A. It seems perfectly proper to apportion that on the same basis as the expense of clerks and laborers.

Q. That is, six to one, then: that is what you mean, is it?

A. No sir, I don't think your plan of figuring you take in that, or which you took the other day, of footing up these various items, and raising the question of what is left, is reasonable or——

Q. We don't want to have any argument about this: Do I understand you to say that the relative proportion of expense
552 between local freight and the total freight earnings as represents station supplies, is the same as it is with respect to station agents, clerks and laborers?

A. I say that.

Q. That is six to one. You have already stated that, haven't you?

A. I say that is not a division of this amount of six to one.

Q. I don't understand what you mean.

Mr. HAGERMAN: Make your explanation.

The MASTER: I understand. You charge the expense of the freight shipment against the amount received for that specific freight shipment; that that would be done, and that the largest item of expense is the terminal expense. If a shipment of freight has two terminal expenses, the expense is larger than if it has one, and if it has none the expense is proportionately smaller.

A specific item of expense, janitor or light service, or something of that sort, in the way of station service, is a given sum of money; I did not understand the witness to say that a certain proportion,

three times or six times as much, should be charged to local freight as to inter-state freight.

Mr. HAGERMAN: The courts say that is not so. The witness testifies so-and-so. He says, taking into consideration things like you mention, it is his judgment that upon the whole, on the average, it would cost so much to earn a dollar.

553 The MASTER: That is what I understand. I think counsel for the defense evidently misunderstand the witness—or else I do.

The WITNESS: I think Your Honor understands me.

Mr. LADD: He stated, as I understood him, that the proportion of expenses charged to station supplies was the same as that of station agents, clerks and laborers; He stated the relative proportion of expense of station agents, clerks and laborers was as six to one.

Mr. HAGERMAN: Not in any calculation he made. But he gave the reasons why in that particular item there should be more apportioned to expense. He does not say, and no court has ever said, that that is made up by averaging up those items and apportioning a certain per cent to one and a certain per cent to another. That is the reason the courts say you must take the opinion of experts, because you cannot guess at it.

Mr. LADD: A man can guess at the whole, when he cannot guess at the constituents of that whole? That is simply ridiculous.

Judge SPENCER: It has been asserted in the case, that it could not be ascertained with mathematical correctness.

The MASTER: I am familiar with that.

Mr. LADD:

Q. What proportion of the item No. 2 under the head of "Station supplies" should be charged to local freight business, relatively to the total freight business?

A. You mean what portion of that figure shown there? (indicating Exhibit 6).

Q. Exactly.

554 A. I cannot tell you because I do not know.

Q. What proportion of item No. 3 for "station furniture:" Is that any larger for the local freight business than for the total freight business?

A. It is my opinion that all expenses as the terminals including incidental costs, of the nature included in this item 3, come under the argument I presented for believing that the cost of handling local freight, so far as terminals went, was from four to six, to one.

Q. Now when you speak of terminals in that connection, every station is a terminal, isn't it?

A. Every station is a terminal, in that connection.

Q. Now what comes under the head of "station supplies"?

A. Pens, ink, paper, envelopes, printed blanks, books, stationery, mops, brooms—everything of that kind, used about the station in carrying on the work.

Q. Do you want to have the Court understand that as to these

items, at a station which is receiving and discharging both local and inter-state freight, in carload and less than carload lots, that the relative expense of these station supplies to be chargeable to the local freight business, is as six to one?

A. If——

Q. I ask you if that is what you want the Court to understand?

A. Haven't I a right to explain?

The MASTER: Answer the question, and then add such explanation as you wish to give, if any.

555 A. That probably—and for an illustration we can take the question of a report which shows the freight received and forwarded, on a local shipment, on every one of which that shipment must appear twice. On inter-state business it only appears for every other shipment once, and for the other not at all. And if I am correct in my supposition that there is more less than carload lots of freight, than carload lots, proportionately, in local than in through business, then those entries on those particular papers are very much longer and very much more voluminous; which directly explains how that particular blank is used four times at least for local, as against one time for inter-state; and the service rendered in making the blank would be proportionate.

Q. You have spoken of "carload freight" and "less than carload freight": What proportion of the intra-state freight business is done on a tonnage basis?

A. I haven't the record.

Q. Have you any idea of it?

A. No, sir.

Q. Can you approximate it?

A. No, sir.

Q. Have you any judgment about it?

A. Yes, sir.

Q. What is your judgment?

A. My judgment is, that on intra-state business less than carload freight is a very much larger proportion of the total than less than carload business is of the total in the case of inter-state business.

Q. What per cent of the total intra-state business is in less than carload lots?

A. I don't know.

556 Q. Have you any idea?

A. I have not.

Q. Have you any judgment about it?

A. I have only the judgment which I explained just not.

Q. What is your judgment?

A. That it is very much greater in the case of local business.

Q. I asked you what is your judgment as to the proportion of the local freight which is carried in carload lots and less than carload lots: Leave out your inter-state business.

A. I have no judgment of the particular per cent it would be, or even what an approximate per cent would be.

Q. You haven't any idea?

A. Of the per cent, no, sir.

Q. If the intra-state freight were divided into carload lots and less than carload lots, have you any idea which would produce the greater tonnage?

A. I don't know which would produce the greater tonnage.

Q. You would be in doubt about it, at present?

A. I would be in doubt about it.

Q. Have you any idea at all?

A. If I answer your question, I must take the time to do so, which you seriously object to, in the length of my answers.

Q. I am asking you if at present you have any idea if the intra-state freight were divided into carload lots and less than carload lots, which would be the larger, in tonnage?

A. I haven't made any calculation on that, as it did not seem to me, in my figuring, that the question was as you state it; but
557 that it was a question of relationship of proportions in local to the proportions in inter-state.

Q. So you have no idea, then, at present, as I understand you, what is the proportion between the volume of freight carried in carload lots and less than carload lots? I speak now exclusively of intra-state freight?

A. I have not.

Q. I understand you to say, and if you did no- so state please correct me, that you knew or had an idea of the relative proportion between the volume of intra-state freight carried in less than carload lots, and the volume of inter-state freight carried in less than carload lots, in Missouri: Is that right?

A. Yes, sir, I have my ideas on that.

Q. What is your idea?

A. That is what I cannot answer off-hand.

Q. You have your ideas now; give them to us now.

A. Of course I have; but in order to put them in language you could understand, I would have to figure it out.

Q. You have your ideas; give us a direct answer.

A. I mean, figure it out to get it down to an answer.

A. Do it now.

Judge SPENCER: Let me see if you understand, Mr. Sturgis: Mr. Ladd wants to know if you know the relative amount of freight in less than carload lots of intra-state freight, as compared with the relative amount of freight in less than carload lots in inter-state business.

A. I understand the question now; I did not before. I have not an idea of the relative proportions, that could be expressed in
558 figures. My idea is, that the less than carload lots is a larger, a considerably larger, per cent of the total in the case of local, than it is in the case of inter-state.

Q. How much larger?

A. I have stated that it could not be expressed in figures.

Q. And you have already stated that you do not know, and have no idea at present, whether the volume of local freight carried in carload lots in Missouri, is greater or less than the volume of local freight carried in less than carload lots: I understand you to state that you would be in doubt about that?

A. You are right, I did so state.

At this point, the usual hour for recess having arrived, the further hearing of testimony was continued to two o'clock p. m.

559 FRIDAY, *Sept.* 21*st*, 1906.

After recess the following proceedings were had:

Cross-examination of Mr. C. I. STURGIS.

Continued by Mr. LADD:

Q. You have stated once, or perhaps more than once, Mr. Sturgis, that you know nothing about rates: that was not in your department?

A. That is right.

Q. Do you know what proportion, then, per ton per mile, exists between the rates on freight in Missouri for intra-state traffic, and for interstate traffic?

A. No sir.

Q. You do not.

A. No sir.

Q. Do you know what general proportion exists between the local tariff in Missouri and the tariff on interstate freight?

A. No sir.

Q. Could you tell whether per ton per mile it was one, two, three or four times as much, on an average, for local traffic, as it is for interstate traffic?

A. No sir, I haven't——

Q. You say you can't, because you have never examined into it?

A. That is correct.

560 Q. Then, I will ask you how you are able to make any estimate of the expense of the local freight traffic, in proportion to its earnings, as compared with the expense of the interstate traffic, in proportion to its earnings, if you don't know anything about the earnings?

A. It does not seem reasonable to me that there can be any such difference between the State rates and the interstate rates, as there is between the expense of local and interstate business.

Q. So you testify as to your opinion simply because it does not seem reasonable to you that there can be any such difference in rates; but at the same time you say you don't know anything about the difference in rates: is that right?

A. I say I cannot give the proportion of one to the other.

Q. Haven't you already said you could not tell whether the rate was one, two, three or four times as much on local traffic, as it was on interstate traffic?

A. No sir, I did not make that statement.

Q. I understood you to do so.

Isn't it true that you have been giving your opinion testimony here, as to the cost proportionately to earnings, on doing the local traffic, as compared with the interstate traffic?

A. Yes sir.

Q. And you know nothing about the rates on interstate traffic, but you do not think it is reasonable to suppose that there is such a disparity between rates on the two kinds of traffic: and it is on
561 that you base your opinion, without any knowledge on the subject?

A. Yes sir.

Q. This morning, we got down to account No. 4, on Exhibit 6, "Switchmen, Flagmen, and Watchmen:" How much larger proportion of that expense, as shown by this Exhibit 6, do you think, in proportion to their earnings, should be attached to that, as against interstate expense.

A. I should say anywhere from three to six.

Q. How is it about No. 5 on Exhibit 6, "Switching"?

A. There would not be anything like that difference in account 5. It would be hard to say that it was double for local what it would be for interstate. That is the amount paid other companies for switching.

Q. It would be hard to say it was double?

A. It would be hard to say it was double. I think that would probably be the outside limit, double.

Q. We will skip account No. 6. How about account No. 7 on Exhibits, "Telegraph Expenses"?

A. A very large part of the telegraph expense, comparatively, was due to the way-freights, and about matters pertaining to less than car-load lots, and local business. It would be very hard for me to estimate how much of that should be put aside for local, and how much for interstate.

Q. Would you say twice as much for local?

A. I can readily conceive it might be twice as much.

Q. That is not what we want. Do you know anything about? Are you prepared to make any estimate on it?

A. I am not prepared to make any estimate of any definite figure of once, twice or three times. It is telegraphing done on the
562 system, and I should say it would be larger for local than for interstate, and perhaps considerably larger?

Q. How about account No. 8 on Exhibit 6, "Proportion of Operating Expenses of Terminals"?

A. That follows closely Nos. 1 and 2; it is practically a part of Nos. 1 and 2, but it is where work is done by another company, and charged to us, instead of being done by us at our own stations. So it would be fully the same general proportion as Nos. 1 and 2.

Q. Now, the total items under that account, "Station Service", according to this Exhibit 6, amount to $999,846.91: Now, Mr. Sturgis, suppose it were lawful for the company to do so, and it were to abandon its local freight business entirely, in Missouri, how much less would those expenses be, in dollars, in your judgment?

A. Very much less. I could not pretend to say in dollars.

Q. Can't you give us an estimate?

A. No sir: because to have any particular class of business you have got to apportion a share of the expenses, and if you haul an extra ton you have got to apportion to that ton a share of the expenses

of the business, in finding the average cost for the haul, although a particular ton you can take care of very cheaply, indeed. That is, a particular ton, which would be additional business when you have your plant running would cost very little, but in getting an average figure you must apportion it all over the whole tonnage carried. It is more clearly defined in the case of an extra passenger on a
563 passenger train. The cost of carrying that passenger amounts to practically nothing; but if you are apportioning the cost of all the passengers on the train, that passenger must stand his share of the expenses. So it would be almost absurd to state any figure as being what it would cost if we took away a certain part of the business, so long as you had to have the plant there. It is just the same as if you reversed the question, and asked if you took away all the interstate business, how much it would cost to run the local business; and the reply to that would be, As much as it does now; that is, a very large proportion of that $999,846.91.

Q. Can you give me any estimate, approximate or otherwise, as to the number of dollars less than $999,846.91, that account would be, if the Burlington did no local freight business whatever in Missouri?

A. No sir, I cannot. That would be an impossible question to answer.

Q. Accounts Nos. 10 and 12 "Freight Conductors" and "Freight Brakemen:" What do you say about the extra expense attached to the local business, in proportion to its earnings, on the items of freight conductors and brakemen?

A. I believe that considering the length of the haul, the speed of the local trains, the loading of the cars, the tonnage of the trains, that the cost would be, at the very least, twice as much for local as for interstate, and it might go very much higher. It might go beyond three times as much.

Q. You mean local, intra-state freight?

A. Yes sir.

564 Q. You don't mean to confine your answer to local trains, do you, because as I understand it, sometimes local trains carry interstate freight?

A. Sometimes they do.

Q. You mean local intra-state freight in your answer?

A. I am talking about local intra-state freight, as compared to others.

Q. Account No. 15, "Freight Train Supplies and Expenses:" What do you say about that?

A. I consider that the same answer applies to that.

Q. At least twice?

A. At least twice.

Judge SPENCER: That was not the whole of your previous answer.

A. The whole of the other answer applies.

Mr. LADD:

Q. What are freight train supplies, and expenses?

A. They are the supplying of such items as axes, brooms, brushes,

chains, fire-boxes, flags, frogs, jacks, oil cans, scoops, shovels, trainmen's lanterns, etc.?

Q. Does it take any more of them to handle a train that has local freight in it, than it does to handle a train that has interstate freight in it?

A. I consider that the use of those is proportionate, or in the same proportion, with the wages of the trainmen.

Q. What is your first item there, brooms?

A. Brooms is one item.

Q. What do you want brooms for, to sweep out the cabs?

565 A. I assume the broom is used to sweep the coal back in the engine cab when it gets in between the tender and the fire box.

Q. Don't you need a broom, as much on an interstate train as on an intra-state train?

A. I am measuring the use of those on the different classes of service, just as I measure the use of the blanks in the station service.

Q. You don't seem to pay much attention to my questions, that is, your answers do not indicate it, I am sorry to say. I asked you if it takes any more brooms in an engine that is carrying intra-state freight, than it does on one carrying interstate freight?

A. No sir, certainly not.

Q. What other item did you enumerate?

A. Trainmen's lanterns, if you please.

Q. Does it take any more lanterns where intra-state freight is carried than where interstate freight is carried?

A. It takes no more lanterns.

Q. What else have you there?

A. Supplies of flags for instance, for the trainmen.

Q. Does it take any more flags?

A. No more flags.

Q. What else?

A. Jacks, in case of trouble.

Q. Does it take any more jacks?

A. No more jacks.

Q. What else?

566 A. It doesn't specify at all in this list. I picked out certain passenger items that apply to freight.

Q. Pick out anything you like, or omit anything you like?

A. Pails, shovels, axes.

Q. Does it take any more of them?

A. It does not take any more of them.

Q. What does it take more of, in the matter of freight train supplies?

A. Trains of any class, carrying any freight, would presumably require the same utensils or supplies.

Q. Take account No. 18 "Oiling cars": Is there any greater expense for oiling a car that carries local freight than one that carries interstate freight?

A. There is no more oil used for the car, but there is more oil used per ton.

Q. What do you mean by that?

A. I mean that if a car of local freight has in it ten tons, and it costs ten cents to oil it that is one cent a ton: if it has twenty tons in it, it is only one-half a cent per ton, cost.

Q. Suppose it is full: Suppose it is a carload: It costs just as much, and no more, to oil a car which is loaded full with intra-state freight, than it does to oil a car loaded full of interstate freight, does it?

A. You are right.

Q. And it is true, isn't it? I will ask you whether or not you know? You also haul cars loaded partly with intra-state freight, don't you? All interstate freight does not go in full car-loads, does it?

567 A. No sir.

Q. And it costs just as much to oil a car partly loaded with interstate—or loaded with, as you say, ten tons?

A. It costs no more.

Q. Now, take the total footing, as shown by this Exhibit 6, of "Expenditures for Train Service," amounting to $321,317.45: How much less would that figure be if the Burlington Company had not had any local freight business in Missouri?

A. It is absolutely impossible to tell you.

Q. You cannot make an estimate?

A. I cannot make an estimate.

Q. Did you pay your conductors and brakemen any more per mile for hauling intra-state freight than you did for hauling interstate freight?

A. It results in a higher payment, in my judgment.

Q. I am going to repeat the question: Do you pay your conductors and brakemen any more per mile when they are hauling intra-state freight than when they are hauling interstate freight?

A. If you mean whether the schedule of pay depends on whether it is intra-state freight or interstate freight, then the answer is, there is no difference.

Q. We will go to the next sub-division in this Exhibit 6, "Engine Service": Take account No. 20, "Engineers and Firemen": How much more in proportion, in your judgment, is the proportion of cost relative to earnings in the case of engineers and firemen

568 in respect to intra-state freight, as compared with interstate freight. I refer now particularly to that item of $354,980.28.

A. The answer would be the same as to accounts Nos. 10 and 12.

Q. I have forgotten what that was?

A. Freight Conductors and Brakemen.

Q. What was the answer?

A. That it would be at least two times, and perhaps more than three times.

Q. Take account No. 21 "Engine Dispatchers, Wipers and Round-house Laborers": What do you say about the proportions as to that item?

A. Considerably more for local than for interstate, because in my judgment, the engines in the way service will come into the round-house oftener, and require more work, and the expenses of the

service spread over the tonnage would make a higher cost for local than for interstate freight.

Q. How much higher?

A. At least twice as much, if not three times.

Q. Do you know anything about this, Mr. Sturgis? Do you really know anything about this?

A. As an exact figure, I do not. As a matter of judgment, I consider I do.

Q. Is it any more trouble to the wiper to clean off a locomotive at the end of a division, when it has been hauling local freight, then when it has been hauling interstate freight?

569 A. I should say, Yes, taking that as an independent question, because in my judgment there is a larger percent of the local freight in way-freight trains, and way-freight engines are older engines, and require more care; they come in oftener. In framing my answer, the expense of whatever number of times they come in, and whatever work is done on them, must be apportioned to the tonnage those engines have hauled.

Q. You say the engines that haul the local freight are old engines?

A. They are more apt to be old engines.

Q. Are they old engines?

A. I think it is safe to say they are older engines.

Q. Is that the fault of the local freight?

A. It is due to the fact that they are not required to make as fast time, or to haul such heavy loads.

Q. But those same engines are hauling interstate freight, in the same trains, along with the local freight?

A. They are, in some instances.

Q. And they go over the same track?

A. Yes sir.

Q. They go over the same track. An engine, whether it is hauling interstate or intra-state freight, makes the same number of miles. The engine does not run beyond the division, does it? It runs from one division point to another—unless something happens to it: Isn't that right?

A. Yes sir.

Q. No matter what kind of freight it is hauling?

A. That is true.

Q. And it has to be cleaned up in the same round-house, whether it is hauling intra-state freight, or interstate freight?

A. Yes sir, that is true.

570 Q. And you want to say it is going to cost appreciably more to clean off that engine which has been hauling local freight than the one which has been hauling interstate freight, although that same engine has been hauling both in the same train?

A. Your remarks do not bear on the question of the estimate at all.

Q. I am sorry that is your opinion.

Judge SPENCER: I don't want to make any objection, but it seems to me this is getting down to such detail that it does not appear to help the matter any.

The MASTER: That is perfectly fair cross examination.

Judge SPENCER: Go on, Mr. Sturgis, and make your explanation.

A. It is true that the cost of wiping an engine does not vary whether there is local or interstate freight hauled by it. But whatever class of freight it is, it costs more to wipe and clean those engines in the way-freight service, than it does the others; partly because those engines, I believe, go into the round-house oftener, for one thing; and therefore, if the local freight carried in the way-freight trains is a larger proportion of all the local freight than the interstate freight carried in way-freight trains—than the tonnage carried in the way-freight trains, then it means that a larger per cent of this item of wiping and round-house service is attachable to the local freight.

571 Q. Now, Mr. Sturgis, suppose a train starts from Cameron and runs to Brookfield—I believe that is a division—Am I right about that?

Judge SPENCER: I think you are exactly right.

Q. Suppose one freight train starts from Cameron, which is the west end of the division, and runs to Brookfield, which is the east end, that train is hauled by a locomotive—it contains five cars of local freight which is to be distributed at some point along the line of the road; it also contains five cars of interstate freight, which is to go to some point in Illinois, say, east of the River; but they are all hauled in that train from Cameron to Brookfield. On the next day, that same locomotive takes ten cars of local freight from Cameron to Brookfield. Does it cost any more to wipe off that locomotive when it gets into Brookfield the next day, than it did on the first day?

A. It would make no appreciable difference in the cost of this class of service for a freight engine.

Q. Here is an item I don't understand, and perhaps you can explain it to me; "Engine Dispatcher:" I know what a dispatcher is, generally, but what is an engine dispatcher?

A. The dispatcher is the man who gets ready the engines that start out, and in some cases he takes the engines to the terminal from the round-house.

Q. That does not refer to directing the movements of the train at all?

A. No sir; it is practically getting the engine ready.

572 Q. Does it cost any more to get an engine ready to haul local traffic than it does to get one ready that hauls interstate traffic? By getting it ready, I suppose you mean loading it with coal, firing up, etc.?

A. Do you mean train or locomotive? If you mean train it would cost considerably more.

Q. The item here is "Engine Dispatchers."

A. My answer in regard to the round-house men and wipers would cover that too. I was speaking of all three.

Q. Account No. 22 in Exhibit 6, "Fuel for Locomotives:" What

is your opinion about that? Does it cost appreciably more for fuel on a locomotive that is carrying local freight than it does for one that is carrying interstate freight?

A. If it makes the same runs, with the same stops, no sir. But when it comes, on the average, to applying the cost of fuel to the tonnage of local freight, the cost of local freight is considerably higher.

Q. Mr. Sturgis, suppose you have got a train hauled by a locomotive, and that train contains ten cars, and each of those cars has twenty tons of freight in it, and it is all intra-state freight. You have got another train, hauled by another locomotive, which contains ten cars of twenty tons each, and that is all interstate freight: Is there any more or any larger expenditure for fuel in hauling one train than in hauling the other, both going the same distance?

A. The same distance, and with the same stops—which I understand your question to mean?

Q. Yes, the same stops.

A. And the same amount of switching?

Q. Yes.

A. It does not.

573 Q. Does it cost any more for fuel, to haul a heavily loaded train over the same distance than it does a lighter loaded train?

A. For a train as a unit it costs more if the speed is the same in both cases, and the number of stops the same. If it is a question of ton unit, it will cost more for the lighter train.

Q. What has the speed to do with it? The higher the speed the greater the consumption of coal?

A. Yes sir, the higher the speed the greater the consumption of coal.

Q. On this item of fuel, then, $540,410.44, how much larger proportion, in relation to the earnings, do you assign to the local freight than you would to the interstate freight, if any?

A. May I qualify my last answer, before answering that?

Q. Yes.

A. I wish to add "With the same number of stops and with the same amount of switching."

To answer your last question, I believe it would follow very closely the proportion named for accounts 10, 12 and 20; that is, at least twice, and perhaps more.

Q. How is it about Account No. 23, "Oil, Tallow and Waste"?

A. I believe the same proportion applies.

Q. What is included under the head of Account No. 24, "Other Supplies for Locomotives"?

574 A. Sand, soap, switch-keys, axes, brooms, brushes, crowbars, flags, hand-saws, head-lights, sledges, globes, oil, and a great many other things.

Q. How much larger proportion do you assign to local than to interstate freight, under that head?

A. I think it would follow the same proportion.

Q. As what?

A. As stated for No. 20 and the others, at least twice and perhaps three times.

Q. Does it take any more axes on a locomotive hauling local freight than one hauling through freight?

A. No sir, not for the same length of haul, and under the same conditions.

Q. What else have you there? You seem to have a great number, forty or fifty items?

A. Yes sir, and I believe they could all be answered in the same way.

Q. You haven't told us all of them, but pick out one, if you can, that it requires more of in the case of an engine hauling intra-state freight than it does for one hauling interstate freight?

A. I don't know of one, provided the two trains are hauled under exactly the same conditions.

Q. Do not make that qualification.

A. I think it is a very important one.

Q. Is there any one of those items of which a locomotive requires more in hauling intra-state freight than it does in hauling interstate freight, over the same track, on the same day?

575 Judge SPENCER: I submit the witness stated it did not take any more, under the same conditions: now what right has the attorney to object to that answer of the witness?

Mr. LADD: Because I have not had any answer to my question.

The MASTER: I think the witness has a right to add that qualification, and if you want to question him as to what those conditions are,—you may do so.

Mr. LADD:

Q. What do you mean by "under the same conditions"?

A. Two you named yourself; the same length of haul and the same number of stops; the same speed, the same condition of weather, and perhaps others.

Q. If one train handling local freight has stopped three times, and the train handling interstate freight has stopped only two times, does that difference require any more axes on that locomotive?

A. It might.

Q. But does it, is the question?

A. It requires a larger supply of axes in the year for that locomotive, because every stop is likely to cause the use of more coal, and there is the more necessity for breaking down coal, and more use of the axes. Every stop is likely to require any one of those two.

Q. Is likely to?

A. Is likely to.

Q. Does it take any more brooms, or flags, or brushes, or handsaws?

576 A. It makes a greater use for all of those, if they make more stops.

Q. Do you undertake to say it does, or that it might? Let us understand each other.

A. On an average it does.
Q. You know that?
A. I am satisfied of it.
Q. Do you know it?
A. I am satisfied it does.
Q. What makes you satisfied of it?
A. Because it is my opinion.
Q. It is just your opinion?
A. Yes sir.
Q. You have your opinion about that just as I might have mine?
A. My opinion is probably better than yours on that, because I have been on the road.
Q. And you know that these extra stops do require more axes, brooms, flags and hand-spikes—Because if you do know it, that is another thing.
A. It is my opinion that it is so.
Q. Do you know it?
A. I have never counted the brooms and axes on a train making three stops, and again on a train making two.
Q. That is simply an illustration.
A. Then please accept my word, it is my opinion.
Q. Now how is it about Account No. 25, "Water Supply"?
A. I believe that the answer made to Account No. 22, "Fuel for Locomotives," will apply closely. That is, that it is at least
577 twice, and probably more.
Q. Does it take any more steam to carry a train loaded with local freight, than it does one loaded with interstate freight?
A. Provided it does not make any more stops?
Q. Suppose it does make any more stops, does it take any more steam to haul that train over the tracks?
A. Yes, provided the other conditions are the same.
Q. If it makes more stops it takes more steam?
A. If it makes more stops, it takes more steam—yes provided the other conditions, all the other conditions are the same.
Q. Suppose the aggregate distance hauled is the same?
A. The loading of the trains, and all other conditions being the same, every extra stop requires more steam.
Q. Is it an appreciable difference?
A. Quite a material difference.
Q. A material difference?
A. Yes sir.
Q. But all your stations, both receive and forward interstate traffic, don't they?
A. Yes sir.
Q. As well as State traffic?
A. Yes sir.
Q. And a large number of your trains which are hauling intrastate traffic have to stop at your stations to deliver interstate traffic, don't they?
A. A large number of them do.
578 Q. Isn't there a very large volume of merchandise, freight of various kinds, shipped from Chicago, for instance, to points

in the State of Missouri, which is in less than car-load lots—or whether in car-loads or less than car-loads—freight which is shipped to interior points in Missouri on the line of your road?

A. Undoubtedly.

Q. And that goes, sometimes, in the same train with intra-state freight?

A. When they get into Missouri.

Q. Isn't there a very large volume of freight shipped from Chicago, for instance, to points on your line in the State of Missouri, in less than car-load lots?

A. Yes sir.

Q. How much of this total of $1,025,123.90, under the head of "Engine Service," as shown on this Exhibit 6, would be obviated as an expense, if your company was not doing any local business in the State of Missouri?

A. That is impossible to state.

Q. You cannot make an estimate?

A. No sir.

Q. Now, under the next subdivision, "Contingencies," on Exhibit 6, is an account "Damage and Loss Freight": how much larger, if any, is the proportion of that expense to be allotted to local than to interstate business in Missouri?

A. In my judgment, very much larger.

Q. How much?

A. It is impossible to state that. The handling of local freight causes a very large increase in the amount of damage done
579 to them, and at every terminal there is a large amount of freight damaged, and a considerable amount of freight that is lost; therefore, the fact that local freight uses two terminals, against the one-half terminal that the interstate uses, makes the part of that apportionable to local freight very much greater than the part apportionable to interstate.

Q. That is capable of exact ascertainment, is it? If you damage a man's freight he sends in a claim for it, and you investigate and know whether it is local or interstate freight, don't you?

A. Not those particular figures; but in actual business it is capable of exact ascertainment.

Q. Can't you tell about it for 1905?

A. No sir.

Q. You know what claims you pay, and what they are?

A. There are these things that come in.

Q. Is there any necessity for making an apportionment on a claim of that sort? Can you tell exactly what those claims arise from, cannot you?

A. Not without a tremendous amount of figuring.

Q. That is the reason you cannot do it—it is too much trouble?

A. It would cost $10,000 to do that. You would have to go back five years, and we haven't the figures to do it.

Q. You think it would cost $10,000 to find out what was the basis of claims for $124,000 that you paid in one year for loss and damage to freight?

A. Yes sir.

Q. You do?

A. Yes sir. It is not a question of what we paid—no sir, I won't say that for one year; but the damage that occurred in one year.

580 Q. But this is what you paid in 1905?

A. My estimate of $10,000 was for damage that occurred in any one year. On the question of what was paid in one year, my figure is altogether too high. But as claims for damages come along for a number of years afterwards, in order to ascertain what was paid on the damage incurred in one year, would necessitate a tremendous amount of work, and would cost at least $10,000.

Q. I don't care to waste any time on this, but let me ask you: You never pay a claim for damage to freight or anything else, until it has been investigated, do you?

A. Yes sir, we do.

Q. You do?

A. Yes sir.

Q. Usually when a claim for damage or loss is made on your company, don't you send out to all the different men who may happen to know about it, send a letter to one man, and he forwards that to another man, and the whole bunch goes to another and another, and finally gets back to your general offices to the man who has charge, and these papers are kept together, and you either pay or don't pay the claim?

A. In these days our anxiety to accommodate the public is so great that our Freight Claim Agent looks at the papers and he will slip that payment out to the claimant just as fast as he can, in order to avoid criticism. You asked if we investigate before paying; that is what we do.

Q. Don't you keep your accounts so as to show on what
581 account, and to whom, that was paid, whether on local or interstate freight; where the shipment was to, and from, and all that?

A. No sir. We do not keep our accounts so as to summarize in any such way. Of course each and every claim shows what it covers, and by an examination of all the individual papers you could tell. But we don't make any summarizing of that anywhere, as to whether it is interstate or state freight.

Q. Did you say what proportion should be allotted to the local freight business on that account?

A. I shouldn't be surprised if that should run as high as five times, proportionately.

Q. Account No. 28, in Exhibit 6, "Damage to Property"; does that mean property of other persons?

A. Yes sir. I should say in that case the cost would be greater proportionately for the interstate than for the local.

Q. Greater for the interstate than for the local: what kind of property is this that is referred to there?

A. It refers to property that is destroyed by fire; as, for instance,

the engines throwing sparks and setting fire to property, burning up fences and crops, and things of that kind.

Q. Why is that greater for interstate than for local?

A. Because the interstate, as a rule, is carried more in through trains, which run at a higher rate of speed, and under greater pressure, and are apt to throw off more sparks.

Q. Then the principal injury referred to there, in that account, is damage by fire communicated by locomotives?

582 A. Yes. The only thing that would qualify that would be that on the small branches there is, perhaps, more danger of fire than there is along the main line; and on the small branches practically all the trains are way-freight trains.

Q. Account No. 29, on Exhibit 6, "Stock killed or injured": what do you say about that?

A. That ought to come under the same head.

Q. You think that would be greater in the case of interstate than in intra-state?

A. Yes sir.

Q. Account No. 30, in Exhibit 6, "Personal Injury": what does that include, injuries to employees and outsiders?

A. Yes sir.

Q. Is that any larger in proportion on trains carrying local freight—do you think any larger proportion should be charged to local freight than to interstate freight?

A. I should think there would be a larger proportion chargeable to local freight.

Q. Why?

A. Because the local freights do more switching at stations, more stopping, and there is very much less risk when a train is going right along than otherwise.

Q. Suppose the same train is carrying local and inter-state freight?

A. If the same train is carrying local and interstate freight, it would be in the same proportion. Of course the chances would be the same in any one particular train.

583 Q. A very large proportion of your trains in Missouri are carrying local and through freight at the same time?

A. My answer is based on the supposition that you must base the expense on the tonnage.

Q. I asked you if a very much larger proportion of your trains run over the road in Missouri, are not made up of partly interstate and partly intra-state freight, hauled by the same locomotives?

A. Yes sir.

Q. Here is an account No. 31, "Wrecking": How is it about that, as between local and interstate freight: does that refer to the wreck of trains?

A. Yes sir, to the clearing up of a wreck. That expense would be about the same. There might be a little more danger of a wreck in local trains than through trains.

Q. "Might be", but is there?

A. I cannot tell you exactly.

Q. You can tell us nothing about it?

A. I can give you only my judgment. As to exact figures, I don't know anything about it.

Q. What is your judgment?

A. My judgment is that there are probably more wrecks occurring to local trains than to through trains.

Q. Because they run faster?

A. No sir, but because they make more stops, and have to get in on the side tracks oftener, and are supposed to get out of the way of other trains.

Q. What do they get on side tracks for?

584 A. In order to stop at a station, or to get out of the way of the through trains.

Q. Is there any other reason for getting in on the side tracks?

A. Except stopping at a station or getting out of the way of a through train, is that your question?

Q. You spoke about getting in on a side track: that is to get out of the way of through trains: what other reason is there for getting on a side track?

A. To stop at the station.

Q. For what?

A. To unload freight, or for any other purpose; to get orders, telegraph orders, any reason for which a train stops at a station.

Q. They wouldn't go on a side track simply to wait for telegraphic orders, would they? They would go on the side track to get out of the way of through trains: that is right?

A. Yes sir.

Q. If they went on a side track for any other reason, what would be the reason? It would be to leave a full car-load of freight, wouldn't it?

A. Not necessarily.

Q. What other reason?

A. To set out a car that has very little freight. It has been setting out freight all along, and it has a little left for that station, and they set it in there. But every time they go in on a side track they have to cross switches, and there is always more danger of a wreck, etc.

585 Q. And the same train that is doing that is very often carrying interstate freight?

A. That may be true.

Q. In a great majority of instances, it is carrying interstate freight, too?

A. I should say that is true.

Q. Now, suppose a train has a carload of interstate freight for some interior town in Missouri on your road, they have to stop at the station, get on to the siding, and leave that car there to be unloaded?

A. Yes sir.

Q. Just as much as if it were intra-state freight?

A. If it is a car of intra-state freight, they would pursue the same course as if it were interstate freight.

Q. How about account No. 32, "Car Mileage Balance"? Do you

think any larger amount of that, in proportion to expense, should be charged to local than to interstate traffic?

A. Very decidedly.

Q. Do you hire cars to do local business?

A. In many cases we use cars from other roads, on which we are paying a per diem, to do local business.

Q. Isn't it a comparatively rare occasion when you use a foreign car to do local business, as compared with the larger amount of your business?

A. What you say may be true, that we would give the preference to our own cars for local business; but this account is not the amount we pay to another road for the use of cars, but it is a balance
586 account; that is, it is the amount we pay to the other roads in excess of what they pay to us. Therefore, it may properly be said to be accruing on every one of our own cars, all the time, because if they didn't have our cars we would have them, and we wouldn't have to use theirs.

Q. But why is it fair, Mr. Sturgis, to charge, as you say you do, very much the larger proportion of this amount for car mileage balance, to local freight, when, as I understand you, it is comparatively seldom you use cars of other roads for the purpose of transporting purely local freight?

A. I have to explain that this is directly affected not only by the use of foreign cars but the use of our cars.

Q. I understand it is the difference between what you have used of other people's, and what other people have used of yours. I understand that perfectly. But why should the local service be charged with any more than its proportion, according to earnings, we will say, of that car mileage balance which arises in that way, when, as I understand, you do not very often use foreign cars to do your purely intra-state business?

A. We do very often.

Q. As compared to the inter-state business, it is comparatively rare, isn't it?

A. I am not a transportation officer.

Q. Do you know anything about it?

A. In my judgment, we would give the preference to our own cars, over foreign cars, in doing local business. The reason I
587 said the larger proportion is to be assigned to local business, is on account of the delay in those cars, incidental to their local use. That is, they make us far less in earning a dollar on local business; for instance, it takes a great deal more time of a car on local business than it does on inter-state business.

Q. We will skip the next account, because it is a small amount. But the next account, No. 34, "Superintendence": what do you mean by that?

A. That covers the salaries and expenses of the General Superintendents, and those officers engaged in conducting transportation, such as Division Superintendents, Trainmasters, Assistant Superintendents, General Superintendents, Superintendents of Car Service, and so on. That is in a general way; there are some other minor items.

Q. How much more, if any, is proportion to the earnings, do you think the local freight service should pay for that?

A. I think it should be apportioned on the basis we found for all the rest of the "Conducting Transportation" accounts.

Q. What is that, three to one?

A. Three to one, at least, taking the total of all those accounts.

Q. The total of those contingencies, according to your footing, is $340,582.41: how much would it be if you were not doing any local freight business in the State of Missouri?

A. I cannot answer.

Q. Can you give an estimate?

588 A. I cannot.

Q. According to this same Exhibit 6, the total for conducting transportation is $686,870.67: if you were not doing any local freight business, how much of that amount would you save?

A. It is impossible to answer.

Q. You cannot make an estimate?

A. It is impossible.

Q. It is impossible for you to make an estimate, is it?

A. Yes sir.

Q. Under the next heading, "Maintenance Equipment", account No. 40, "Repairs of Freight Cars", $655,327.02,—do you think the local freight service ought to bear any more than its ordinary proportion of that?

A. Yes sir; I think repairs of freight cars, damage of freight cars, from which the repairs result, is very largely due to the local freight service, and to the handling of the cars at the terminals. In other words, largely, it would follow the same division as for total station service.

Q. What was that?

A. At least, two, and probably more times; in fact, over three times.

Q. And you use the same cars at different times of the year, for the transportation of local freight and inter-state freight, don't you?

A. What is that?

Q. You don't use the same car at the same time for the transportation of local freight and inter-state freight, but you do use

589 the same car for both kinds of business?

A. Yes sir.

Q. Account No. 42, "Repairs of Locomotives," $304,057.17"; you think the local business ought to pay any more than its proportion of that?

A. Yes sir, but I don't believe that is a large proportion in the freight. But I should say at least twice.

The MASTER: You think it should pay no more than its proportion; but the question is, what its proportion is?

A. I understand him to say the proportion.

Mr. LADD: Twice in proportion to the inter-state.

Q. I will pass account No. 43. How about account No. 44, "Supervision Equipment, $22,135.47"? That should be apportioned on the same basis as the other maintenance of equipment accounts?

What is the proportion? Is it two, three, four or six, to one, as between local and inter-state?

A. At least three.

Q. Now the footings of that subdivision are $997.352.87: Can you give me an estimate of how much that would be reduced if your road was not doing any local freight business?

A. It is impossible to estimate it.

Q. Let us see if we cannot bunch this, and save time. Take the next subdivision, "Maintenance of Road and Structures", running from No. 45 to No. 62: Do you think there is anything in that list for which local freight should be charged more in proportion than inter-state freight, and if so, what items?

590 A. My opinion is that the cost should be apportioned to local and inter-state on the basis of the amount of use made of the various facilities covered—and this is, perhaps, the hardest division of the operating expenses to arrive at a definite apportionment of. Of course, freight that does not use terminals, or stations, uses largely only the main line and passing tracks; whereas other trains use side tracks, and yard tracks; and it is very surprising to realize how many miles of track there are, in many cases, in terminals. That is, a single terminal will include sixty to a hundred miles of track, where the main line in the limits of that terminal perhaps does not exceed four or five miles, if as much. On that basis, I think proportionately we should say that the maintenance of way and structures for a dollar of earnings should be assigned, two for local and one for inter-state, at least. But it is a very difficult group to apportion.

Q. Take the next one "General Expenses", running from Nos. 63 to 73 inclusive. What do you say about that?

A. The general expenses, in the main, may be properly apportioned, in my judgment, on the basis of the apportionment that we find for the total of all the other subdivisions of operating expenses. That is, if, for example, the others are in the proportion of three to one, I believe it is proper to apportion the general expenses on the same basis. There are some exceptions to that in individual accounts. For example, "Outside Agencies"; I should put a very much larger portion of that into the inter-state business. That is the only exception I note.

591 Q. As to the rest of it, you say the local ought to pay in proportion to its earnings, three times as much as the whole?

A. At least.

Q. Is that true, do you think, of the salaries and expenses of general officers, amounting to $40,000 and more?

A. Yes sir, I think that is the proper measure.

Q. And you think it would be true of insurance?

A. I think it would be true of insurance, but I think it depends on the use made of the buildings insured, and of the cars insured.

Mr. HAGERMAN:

Q. Did you give your answer about "General Expenses"?

A. I think I did.

Mr. LADD:

Q. What is this insurance, on the equipment or the structures?

A. On both. On practically all property that is in danger of destruction by fire.

Q. Don't you use the same buildings for the use of your local business as for interstate business?

A. That is true.

Q. The same stations?

A. That is true.

Q. Don't you use the same car that you insure, in very many cases, for local and for interstate business?

A. That is very true, as I said before, when discussing the question of cars.

Q. And at the same time you say it is fair to apportion
592 to the local freight business, in proportion to its earnings, three times as much of this insurance as you do to the whole freight business?

A. That seems proper to me, and I believe that same principle governs in apportioning the general property of the company, whether in the form of interest on it, dividends on it, or taxes on it; that the amount of use of the property should govern.

Q. Then, to sum this thing all up, Mr. Sturgis, in your opinion, it is a great calamity, from the standpoint of a railroad company, that it has to carry any freight between the people of that state at all?

A. Is that a question?

Q. That is a question.

A. No sir.

Q. It is a sacrifice, so far as it might be considered from a pecuniary point of view, for a railroad company to do any local business at all in Missouri?

A. No sir.

Q. Isn't that the result of your testimony?

A. No sir. But I consider that in order to get——

Q. You say——

Judge SPENCER: Let him answer.

A. I say in order to get any net earnings, out of local business, we must consider it in the light of additional business, additional business meaning the same as a passenger who gets on a train that is already scheduled to run; that is, we have the facilities, and
593 can, therefore, do the local business and make some money. But if we were not allowed to take the local business, especially where it was hauled less than fifty miles, unless it of itself should pay its share of the cost, then we would lose money on that local business.

Q. On the whole according to your testimony, if I understand it, the company would be better off in money, if it did not do any local business at all?

A. You understand me.

Q. The local business does not pay expenses, you say, and falls

very far short of paying its own expenses: then why isn't the company worse off for doing the local business?

A. My statement is that the local business, particularly such as is hauled less than fifty miles, does not pay the proportion of expenses which would have to be assigned to it, if we made, or could make, an accurate assignment of expenses between local and interstate freight.

Q. I am not asking you about fifty miles. I am asking about the entire local freight of the state. You are worse off for doing it?

A. We are not worse off for doing it.

Q. Why not, you lose money by it, don't you?

A. Regarded as extra business, in my judgment we make money by it.

Q. You would rather have it at those prices, than not to have it?

A. We would rather have it at those prices than not have it.

Q. Although you lose money by it?

594 A. We don't lose money, regarding it as extra business.

Q. But, taken by itself, you do lose money on it.

A. If there were no other business, we would undoubtedly lose money by it.

Q. And you want it to pay its own way?

A. We would like to have it pay its own way.

Q. Isn't that what you are insisting upon?

A. I am not insisting on it.

Q. You are a sort of a representative of the company here?

Mr. LADD: I am practically through, but not quite through, with Mr. Sturgis. But I should like to ask him about the information he was asked to furnish.

Q. Are you going to give us the information we asked for last night, covering July and August business? I understood you to say yesterday that complete information, covering 1905, could not be had, on account of the absence of some of the way-bills: will you let Mr. Fisher, our expert, examine all the way-bills you have for the business of September and October, 1905? We think, possibly, we might form some kind of an estimate from such as you have.

A. So far as willingness to let Mr. Fisher have access to our records is concerned, we have already proven that. Now, going to our way-bills necessarily causes very considerable inconvenience. But if there is anything that can be actually accomplished from them, we will not make any objection. But there are so many way-bills gone that any results reached would not, in my judgment, be worth

595 the paper they are written on.

Judge SPENCER: Let Mr. Fisher be the judge of that. Let him look over everything you have.

Mr. HAGERMANN. It seems to me that Mr. Fisher and Mr. Sturgis ought to sit down together, and be able to determine this thing between themselves.

Mr. LADD: But I don't want that. I want to look at it myself.

The MASTER: You mean the way-bills?

Mr. LADD: I want to know what the result of it is. I don't want

to trouble Mr. Sturgis. All I ask him to do is to turn over, under such restrictions as may be proper, these papers to Mr. Fisher.

A. I shall be very glad to comply with that request. Mr. Fisher will have full access to them.

Mr. LADD: Well, that is understood. I refer to the way-bills, such as they are, for September and October, 1905.

I spoke of another matter last night, and I forgot if you gave us an answer; perhaps you wanted to consider it, or to consult with Judge Spencer; we would like to have the way-bills for July and August of this year.

Judge SPENCER: We haven't all the waybills for July and August.

Mr. LADD: Not for last month?

Judge SPENCER: So I am informed by Mr. Sturgis.

(Colloquy here follows.)

Mr. LADD:

Q. Can you ascertain the amount of the intra-state tonnage for car-load and less than car-load lots, for the months
596 of July and August, 1906?

A. No sir.

Q. Why not?

A. We haven't the records.

Q. Have you had them?

A. Yes.

Q. And you haven't them now?

A. We haven't them now.

Q. Can you ascertain the ton miles of intra-state, and interstate, tonnage, for the months of July and August, 1906—I mean for Missouri, all the time, of course.

A. I make the same answer.

Q. I mean, of course, both in car-load and less than car-load lots?

A. The same answer.

Q. What is your answer?

A. I haven't the records, though they were in the office and accessible during the time that the experts for the State were making their examination.

Q. Can you ascertain the amount of freight earnings, both interstate, and intra-state, for the months of July and August, 1906?

A. Separately?

Q. Yes.

A. No sir.

Q. Why not?

A. The same answer applies.

Q. Can you ascertain the amount of tonnage, both intra-state and interstate, separately, for the month of October?

597 A. No sir.

Q. Why not?

A. The same answer applies.

Q. Can you ascertain the number of ton miles of both intra-state

and interstate tonnage, freight, for the same month, October, 1905?

A. No sir, that same answer applies.

Q. Could you give that to me separately, in car-load lots and less than car-load lots?

A. No sir.

Q. Why.

A. The same answer applies.

Q. Have you none of the way-bills for last October?

A. We have some of the way-bills.

Q. Have you, in your office, the way-bills, so far as the business has progressed, for this present month, September, 1906?

A. Yes sir.

Q. Can you ascertain, at the end of this month, from the way-bills which you now have, and which you will then have, the amount of intra-state and interstate tonnage for the present month, September, 1906?

A. I can give all the classes of information covered by your last half dozen questions, for the month of September, 1906, after the close of that month's accounts.

The MASTER:

Q. When will that be?

A. You take all the way-bills, for instance for September—they do not get into the office until about the 5th or 6th of Oc-
598 tober. Then they all have to be sorted and checked against current accounts. We cannot interfere with the current month's statement. It will take until about the 25th or 28th of October, before they are sorted and in their places, and until they are so sorted we cannot use them for a statement of this kind. But, just as soon as they are sorted, we can get them for this kind of a statement.

Q. Couldn't that work be expedited in such a way that it could be done by the 15th of October?

A. No sir. Things are keyed up and pushed all the time, to get them finished by the end of any one month. Any railroad man knows that.

Mr. LADD:

Q. Would it be possible to allow our expert to take the September way-bills (I don't mean, of course, as they come in) before you get them all sorted out, so he would be at work at them before you had completed your classification of them? Couldn't he work along on them when they come in—I don't mean immediately when they come in, but shortly after?

Judge SPENCER: That he could follow you?

A. I will say, that if it is decided the statement has to be made, and the expert is to have access to these papers, we will let him get to work on them at the earliest possible moment not to interfere with our regular routine work. I will not delay him one moment. Of that I will give you my personal assurance.

Mr. LADD: Your Honor, it is very evident we cannot get this in-

formation, either from Judge Spencer or ourselves, for the
599 next meeting, because the way-bills will not be in and sorted until late in October. But this case is not going to be disposed of for some time—at least, until you hear the Wabash case.

The MASTER: I don't know that I will dispose of any until I have heard all the cases.

Mr. LADD: Then, may we put it in afterwards?

The MASTER: Certainly. I don't mean this case is to be left open generally; but if, after all the evidence in this case is closed, you want to put in any evidence on the subject of this investigation which you may possibly make concerning the month of September, 1906, you shall have opportunity to do so, and I will hold the case open for that purpose only.

At this point by consent of Counsel, the Master adjourned the further taking of evidence herein to Monday, October 8th, 1906, at ten o'clock A. M., then to be resumed at the same place, No. 209 Adams St., Chicago, Ill.

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601 CHICAGO, ILL., *Oct.* 8, 1906.

Pursuant to adjournment, the hearing in the above entitled cause was resumed at Room 28, General Offices of the Burlington Railroad Company, at No. 209 Adams St., on this 8th day of October, 1906.

Present: Hon. F. R. Schofield, Special Master; O. M. Spencer, Esq., of counsel for complainant.

No counsel appearing for the defendant in the case, on motion and by consent of complainant's counsel the further hearing was adjourned until tomorrow morning, at 10:00 o'clock.

CHICAGO, *October* 9, 1906.

Pursuant to adjournment, the hearing of the above entitled cause was resumed on Tuesday, October 9, 1906, at No. 209 Adams St., Chicago.

Present: The Hon. F. R. Schofield, Special Master; Judge O. M. Spencer, of counsel for complainant.

On account of the absence of counsel for defendant, the further hearing, by consent of counsel for complainant, was adjourned until Monday, October 22nd, 1906, then to be resumed at the General Offices of the Burlington Railroad Company, in the City of Chicago.

CHICAGO, *October* 22, 1906.

Pursuant to adjournment, the hearing of the above entitled
602 cause is resumed at Room 28, General Offices of the Burlington Railroad Company at No. 209 Adams Street, Chicago, on this 22nd day of October, 1906.

Present: Hon. F. R. Schofield, Special Master; Judge O. M. Spencer and Mr. Frank Hagerman, of counsel for complainant; and Messrs. Herbert S. Hadley, Rush C. Lake, and John Kennish, of counsel for defendant.

The following proceedings were had:

The examination of Mr. C. I. STURGIS, continued as follows, by Mr. HERBERT S. HADLEY:

Gen HADLEY: I want to ask Mr. Sturgis a few more questions of a general nature, and as counsel indicated they had some calculations to complete, if they want me to go ahead with these before Mr. Sturgis produces his figures, I am ready to do so.

The MASTER: It was understood at the last adjournment that there might be some additional question that the State desired to propound to Mr. Sturgis.

Gen. HADLEY:

Q. Mr. Sturgis, I want to ask you a few general questions relating to certain features of your testimony:

In determining the amount of expenses that should be assigned to State freight business, do you think it is as correct a method of calculation to take that portion of the entire expenses of doing all business in the State which the State local Freight earnings are of the entire earnings, as it would be to take that percentage of
603 the expenses of doing all the freight business in the State that the earnings upon State freight bears to the entire freight earnings in the State?

A. That, as I understand, is a point that I have been figuring ever since my testimony last given. But I agree with the statement here made.

Q. That is, you agree that it would be a more proper basis to take the percentage of the freight expenses that the earnings upon local freight bears to the entire freight earnings; you agree with me upon that, Mr. Sturgis?

A. Yes.

Q. Let me ask you this question: Assuming the correctness of the facts stated, that it would cost the company $5 in expenses to carry a car of inter-state freight 50 miles in Missouri (that is, fifty miles of the inter-state haul being in Missouri), and that it would cost the company $15 to handle the same car of freight the same distance in a State shipment, does that furnish an example of this three-

fold ratio representing the expense of conducting State freight business as compared with the expense of conducting inter-state freight business to which you have previously testified?

A. My testimony was not given to that effect. My testimony was on the basis of the revenue.

Q. Well, how would you describe or express the increased expense in the handling of State freight, as compared with the expense
604 of handling inter-state freight, which is indicated by this illustration?

A. This is an attempt to figure on a ton mile basis, about which we can say nothing. We don't know anything about it. On the basis of the revenue, as stated by the Master in the last hearing, it means it costs three times as much to earn a dollar on local freight business in the State of Missouri, as on all freight business.

Q. Well, I ask you how you would express the increased expenses in doing all State freight business, as compared with the expense of doing the inter-state business, in this example I have given you?

A. I cannot make any statement of it, because we have not figured on a ton mile basis.

Q. You can describe, can't you, or express what this would be as the relation between the expenses of the two traffics?

A. No sir, I should have to know the revenue in the different cases in order to do it; and I should have to know the average revenue of the whole business, and that is what my testimony implies. I don't think you can take out a particular shipment and on every shipment state that that same relationship holds.

Q. Then you don't mean, by the testimony you have given before as to this three-fold ratio, that it would be illustrated by saying it cost $15 to handle a car of State freight, say 50 miles, and cost $45 to handle a car of inter-state freight the same distance?

605 A. I stated that I haven't made any figures along that line at all, even for the average or the whole business, but when I have given an opinion as to the cost of doing business, it has been on the revenue basis, as applied to the whole.

Q. If you could get at the facts in reference to the tonnage basis, wouldn't that, in your opinion, be the correct method of determining the expense of doing the State business, as compared with the inter-state business?

A. I don't think it is as good as the revenue basis.

Q. Are you familiar with the testimony of Mr. Fink, in the case of Smythe vs. Ames, and of Mr. Raling and Mr. Dillworth in these various rate cases?

A. I have read them and studied them more or less, but I don't remember that Mr. Fink himself testified in that case. Was Mr. Fink alive at that time?

Q. Yes.

A. I had forgotten that fact.

Q. Do you remember on what basis their testimony was given, whether on the basis of the cost of handling the State traffic being a certain percentage greater than the expense of handling the same

amount of freight on interstate traffic; or whether it was on the basis of proportion to revenue?

A. My recollection is it was on the cost of handling
606 the traffic, and I don't suppose—they certainly did not have the ton mile cost, and I don't know that it was brought forth. Whether it was on the handling of traffic as measured by revenue, or on an imaginary or estimated ton mile cost, I don't know.

Q. You don't know on what basis those gentlemen testified?

A. They testified as to the greater cost, but I don't remember whether they distinctly stated it was on the basis of revenue or not.

Q. If it cost $15 for the company to handle a car of freight 50 miles in a state shipment, for which service the company received $21; and if it cost the company $5 to carry the same car 50 miles in Missouri, as part of an inter-state shipment, for which service the company received $7, wouldn't the percentage of expenses to earnings be the same upon each shipment?

A. In that identical case, yes. But you cannot take a particular case and use it to illustrate the average for the whole business. You must remember that the whole business comprises all sorts and conditions of shipment.

607 Q. In this example I have given you, the net profit to the railroad company on the State shipments would be three times as great as upon the inter-state shipments. That would be true, wouldn't it?

A. That would be true.

Q. And yet, in this expense, the expense of handling the State shipment would be three times as great for the same distance as the expense of handling the inter-state shipment?

A. In the case you have cited, yes.

Q. Doesn't that illustrate the proposition that when you come to consider the increased expense in doing State business over the expense of doing inter-state business, in proportion to revenue, you must reckon with the difference in revenue derived from State business as compared with inter-state business?

A. No sir. And I can show you where the fallacy comes in, very plainly. You have no right in comparing these two to compare shipments of the same distance, for instance, for the reason that one factor which was brought out very plainly in the last testimony, is, that there is a decided difference in the average haul of State and inter-state business. Therefore, you cannot take a single case as an illustration, and say "here is a certain shipment which did a certain thing," and "here is another certain shipment which did a certain thing", because you entirely neglect the difference in the haul on State and inter-state business.

Q. But the question of average haul of State freight as
608 compared with the average of inter-state freight goes entirely to the question of additional expense, if any, in handling State freight as compared with the expense of handling inter-state freight, doesn't it?

A. Isn't the proposition entirely one of expense of State and inter-state freight?

Q. Not when you consider it in reference to the proportion of revenue produced, without considering the question of where you get the greater revenue from, whether from a ton mile of State freight, as compared with a ton mile of inter-state freight?

A. I so not agree with you.

Judge SPENCER: Which of those two propositions do you regard as a local shipment?

Gen. HADLEY: The local shipment is the one entirely in the State. It may have gone 300 miles outside the State of Missouri.

Judge SPENCER: Are they both through, or both local shipments?

Gen. HADLEY: The $15 is the local shipment.

Judge SPENCER: You are characterizing the local and the inter-state shipments, in your example, by the difference in price; when that does not constitute a local or a through shipment; it is the difference in the haul and the difference in the handling.

Gen. HADLEY: That goes into the question of expense, which I assume would be made by the company on the different classes
609 of shipments.

Judge SPENCER: You are treating one car and one shipment and taking a different price, three times one to the other. You never knew a shipment that would bear out your conclusion.

Gen. HADLEY:

Q. Mr. Sturgis, ought you not, in determining the relative expense of handling State and inter-state freight, to take into consideration the earnings on State freight as compared with the earnings upon inter-state freight in making your approximation upon the proportion of revenue derived?

A. My understanding is that this is what we have done all the way through. It has been entirely a question of the cost per dollar of revenue earned, which means a dollar of earnings.

Mr. HAGERMAN:

Q. In other words, as I understand you, you have already allowed for the very thing that Gen. Hadley is talking about, on the basis of your figuring?

A. Yes sir. I understand the question. It is a matter of earnings, and that is what we have been figuring on from the start, the cost of earning a dollar.

Gen. HADLEY:

Q. On that basis, you calculated the expense of handling state freight, on the proportion of the earnings on State freight, to the entire earnings of the company. Yet the relation of the tonnage of State freight to the tonnage of inter-state freight handled would not agree, would it, with the relation between the earnings upon
610 the two classes of freight—is my question clear?

A. The first part of your question there goes back to the very first one you asked today where I admitted that the proper basis of figuring, in making up the figures, was to take the propor-

tion that the local was of all the freight, and not that the local was of all the earnings on all classes of business.

Q. We agree upon that?

A. In other words, in presenting in the other testimony the figures on that alone, I presented the wrong figures. The testimony was perfectly clear, but the figures were made up on a wrong basis.

Mr. HAGERMAN: His testimony was just as he gave it today, but whoever made the computation made it upon another basis.

The MASTER: Will that involve a reformation of all the expenses?

Mr. HAGERMAN: No sir.

Gen. HADLEY: It will necessitate a reformation of his figures as to the proportion of expense of handling State and inter-state business, in the results in figures.

Judge SPENCER: The results may not be the same. But it was not offered in evidence.

The WITNESS: It was not given in statements, but it was simply figures given in answering questions.

The MASTER: I am expecting that in the end you will place in the form of tables, so I may refer to it readily, the statements made in the testimony; otherwise, it would take me forever to sift
611 it out.

Mr. HAGERMAN: I wished to call attention to it so you may understand as we go along, and not have it create confusion in the future.

Gen. HADLEY:

Q. Mr. Sturgis, the earnings from State freight were nineteen and a fraction per cent of the earnings on all freight in 1904?

A. Nineteen and seventy-four hundredths.

Q. You do not mean to say, Mr. Sturgis, that the tonnage of State freight handled was as much as 19 per cent of the entire freight tonnage handled in the year 1904?

A. I do not know.

Q. That must be determined, must it not, by whether a ton of freight handled in the State freight business, produces more or less revenue per ton per mile, than a ton of freight handled in the inter-state business?

A. Yes, sir.

Q. Then, Mr. Sturgis, doesn't that fact show the necessity of considering in your basis of calculation the different rates at which the two classes of freight are handled?

A. No sir. My testimony is entirely on the question of costs per dollar of revenue. Now, there may be other lines of testimony possible. But, so far as my testimony is concerned, the tonnage cuts no figure at all.

Q. Although a ton of State freight handled a certain distance might produce twice as much revenue per ton per mile, as a
612 ton of inter-state freight handled the same distance?

A. I appreciate that what you say is true. And it might produce half as much, possibly, on the other side.

Q. Couldn't you, by taking a certain period, say one month, and

figuring the rate per ton per mile earned upon State freight business done for that period, and taking the rate per ton per mile earned upon inter-state business for the same period, determine the relation between the increased revenue, if any, upon State freight business as compared with the revenue upon inter-state business?

A. If you had the business of the two classes measured by tons, you certainly could compare the two classes of business measured by earnings. There is no doubt about that fact.

The MASTER:

Q. The difficulty would seem, then, to arise from the fact that there is such an intermingling of local or State business with inter-state business, that it would be impossible to separate the one from the other, so as to get an exact mathematical ratio, measured by ton miles?

A. No sir; your Honor is mistaken. They can be figured, but it is an expensive undertaking to figure them; every way-bill and every shipment must be gone over, in order to determine it. But you can get the number of ton mile haul on local and on inter-state business, in the State of Missouri.

Gen. HADLEY:

Q. You have definite, published tariffs at which inter-state freight is handled, and you have definite published tariffs at which
613 State freight is handled, have you not?

A. We have.

Q. And a shipment is always entirely an inter-state shipment, governed by inter-state freight rates, or it is entirely a State shipment governed by State freight rates, isn't it?

A. That I cannot tell you. I do not know.

Q. Let me see if I understand that: Do I understand you to say that such a ratio is practicable, and it can be done from the books of the company?

A. That is, getting at the number of tons hauled one mile from the different classes of business?

Q. Yes.

A. Yes, sir, that could be done, not from the books, but from the original records, but at a very considerable expense.

Q. And am I to understand that you are admitting in your answer to the first question this morning that that would be a more correct basis of figuring than that you already have?

A. No sir. The first question this morning had no relation to that.

Gen. HADLEY: The first question this morning was, whether you took a percentage on local, inter-state and miscellaneous earnings, or took a percentage upon freight business alone, which the local freight business bore to the entire freight business?

614 A. I stated this morning that this ton mile basis was not necessarily any better than the revenue basis—or about to that effect.

Q. Do you know as a fact that that is the basis adopted by the

Inter-state Commerce Commission of the United States, in determining rates—this tonnage basis to which I have referred?

A. I know it is not.

Q. Upon what authority do you make that statement, that that really is not the basis adopted by the United States Inter-state Commerce Commission?

A. Because I have been as close as anyone except Mr. Adams. I have been in consultation for years with the statisticians, and in their conventions, and have had a great deal to do in making up their reports; I have heard all their arguments have been before the commission, and am as well versed as anybody in the United States on that point—if you will excuse my presumption in so saying.

Q. Are you familiar with the report and decision of the Commission in the State of Kentucky?

A. I have, since the last hearing here, read over extracts from their decision; and they are absolutely illogical.

Q. Do you know that that report and decision was prepared by the expert on Rates and Railroad accountant of the United States Inter-state Commerce Commission?

A. I can hardly believe it is possible, and am very sorry
615 for him if it is so.

Q. If that is true, it does not affect your judgment?

A. Not a bit. He, as an individual might have done such a thing as that; but I cannot believe it is possible, and if he did it was very much misunderstood by those who put it in print.

Q. If the cost of earning a dollar on State freight is three times the cost of earning a dollar on inter-state business, and the rates upon State freight are twice as high per ton per mile as the rates upon inter-state freight, then is not the expense of handling State freight six times as much as the expense of handling inter-state freight, upon your theory?

A. Six times as high, you mean, on the basis of ton mile?

Q. Yes.

A. It depends not upon the rates as it does upon what we actually get. It is not a thing, in my judgment, that can be figured from the tariffs.

Q. Assuming that to be true, that one million dollars is earnings upon State freight, and the four million dollars earnings upon inter-state freight, and the cost of doing the State freight business is three times as great proportionately as the cost of earning a dollar on doing interstate freight business, and yet that one million dollars on State freight is earned by charging twice as much per ton per mile as the four million dollars earned on inter-state freight, does not that result in the expense of State freight being six times as
616 great compared with the expense of Interstate freight business?

A. I don't think it would be right to answer that question without qualification, because I believe it would be misleading.

Q. Answer it any way you want.

A. You must remember that for any given number of tons miles

of local freight, there may be two, three or four times as many shipments as there are in one shipment of inter-state freight.

Q. Certainly, and that is what you claim as the basis of the three times greater expense?

A. I say that is one element that enters into it.

Q. If the rates per ton per mile from which the company derives its revenue are twice as large for handling a ton of State freight per mile, as compared with inter-state freight, don't you have the expense figured out six times as great?

Judge SPENCER: Do you mean that the local freight pays twice as much per mile as the inter-state freight?

Gen. HADLEY: Yes, upon a conservative basis.

Judge SPENCER: Then does it increase the three to six, or divide it by one-half.

Gen. HADLEY: I ask Mr. Sturgis that. That would double the expense.

Judge SPENCER: These computations are on the basis that the local and through business cost the same, as figured and talked about up to this time.

617 Gen. HADLEY: I am adding an element which I think the evidence will show upon my theory.

Judge SPENCER: Then that would not necessarily increase the three times in the evidence. It would simply divide it and make it one and a half instead of three.

Gen. HADLEY: Let the witness answer the question.

A. Considering the whole freight business, but not considering any particular part of it, if the cost on the basis of revenue is three times as great for local as for interstate business, and twice as much money per ton per mile on an average is received on local as on inter-state freight, then the cost per ton per mile will be six times as great.

Q. In answer to questions asked you by Mr. Ladd, on the last day of your examination here before, when you were examined as to the additional expense on these different items which constitute the entire expense of doing freight business, you testified that the expense, or the proportion of expense, of those different items that should be assigned to State traffic, were from two to three or four times as much in proportion of those expenses as should be assigned to inter-state traffic, I believe, did you not?

A. That is in effect as I recall it.

Q. That testimony was given upon the theory of the increased expense in handling State business as compared with inter-state business, with reference to the revenue produced, wasn't it?

A. That testimony entirely, throughout, was on the basis

618 of the revenue.

Q. I am asking you, in apportioning the different items to State and inter-state traffic, and in giving your opinion as to the increased expense of these different items in handling State traffic, as compared with inter-state traffic, you were talking of expense alone, and not of expense in relation to revenue?

A. Expense in relation to revenue, throughout.

Q. You have stated that the earnings of the Burlington Company upon State traffic in 1904, were $1,525,000 in round numbers: Do you contend that it cost three times as much to bring in that amount of revenue, proportionately to each dollar earned on the State business, as it would have cost to have brought the same amount of revenue on Inter-state business?

A. Yes sir.

Q. In giving that testimony you have argued, have you not, that the railroads charged and received the same rate per ton per mile on the State traffic as it charged and received on the inter-state traffic?

A. No sir, I have not. Because I do not know anything about the figure necessary for that computation.

Q. Well, Mr. Sturgis, assuming that your theory, that the cost of handling State freight is proportionately three times greater than the cost of handling inter-state freight and, assuming further, that the earnings or revenue of the company from handling State
619 freight are three times greater per ton per mile than the revenue from handling inter-state freight, then it is true, is it not, that the expense of handling State freight is correctly determined by taking that percentage of the total freight expenses which the earnings on State freight bear to the entire freight earnings?

A. Isn't that practically the same question I wrote out an answer here, except you substitute three times instead of twice?

Q. It involves a different element, I think, but is it along the same lines.

A. I will read it over then, and study it.

Q. It is the converse of the proposition.

A. I do not see how that conclusion holds as to that, at all (indicating written question).

I don't see what the conclusion has to do with the first part of the proposition. The conclusion, it seems to me, has been answered in a question by itself, already. Both of those have been asked and answered.

Q. The question was asked you before, in cross examination by myself——

A. Today?

Q. No, when you testified before. You may have misstated yourself, or your answer may have been misunderstood. I want to call your attention to that testimony. I asked you this question, on page 223 of the record:

"Q. In making your record as to the loss upon the local business, under your theory of calculation, you have assumed that the
620 revenue derived from the handling of State freight was the same per ton per mile as the revenue derived from the handling of through freight or inter-state freight?" And you answered by saying:

"That is practically the way it works out." Does that anwser correctly state your position upon that proposition?

A. Well, as I stated, I have not the figures showing the tonnage per ton mile. Therefore, there is no comparison in my mind at

all upon that subject. In a general way, it does not seem to me that we get much higher rates, if any, per ton, for the doing of State business, as compared with inter-state business under the same conditions.

Q. I do not want to enter into that discussion with you because you are not a traffic man. But I want to know if you wish to stand by the answer you gave before, on page 223, that your calculation as to the loss on doing the State business, and the increased expense of handling it, was made upon the theory that the revenue derived from the handling of State freight was the same per ton per mile as derived from the handling of inter-state freight per ton per mile?

A. That is practically the way it works out, as explained just now in my remarks to you.

Q. Then Mr. Sturgis, without reference to what may be the ultimate effect, but assuming that the revenue derived from the handling of State freight per ton per mile is three times as great as the revenue derived from the handling of the inter-state freight per ton per mile, then it is true, is it not, that you can determine
621 the expense of handling the State freight by taking that proportion of the entire freight expenses that the local freight earnings bear to all the freight earnings?

A. I do not see what the two points have to do with each other. I don't see what your conclusion has to do with your first statement.

Q. You do not?

A. No sir, that is, I don't understand what the relationship of the ton miles to earnings has to do with the correctness of taking the proportion of State to inter-state freight.

Q. Well, then, your answer would be that my conclusion as indicated in that question, would not be correct?

A. No sir, I do not say that.

Q. You do not say that?

A. No sir.

Q. Would it be correct?

A. I don't understand your question.

Q. You do not?

A. No sir.

Q. Let me give an example. Assuming, for illustration, that the earnings on the freight business done by your company in Missouri, were $5,000,000 in the year 1904: Assuming that the earnings on State freight were $1,000,000: assuming that the earnings
622 upon inter-state freight business were $4,000,000; then if the same average rate per ton per mile had been received for the haudling of State freight as had been received for the handling of inter-state freight, and the expense of doing the same classes of business were the same, you would take 20 per cent of the expense of the doing of the freight business, as the expense of doing of the State freight business, wouldn't you?

A. In this case you put it, if they were the same?

Q. Yes.

A. Then you would use the percentage that the State is to the interstate freight.

Q. You would take that percentage of the entire freight expenses as the expense of the State business. Assuming that the revenue was the same per ton per mile, and that the expense of handling per ton per mile was the same?

A. If the average rate received per ton per mile for the whole of each class of business mentioned was as stated, your conclusion in the supposed case seems to be correct, except that you seemed to overlook the fact that my testimony has been three times the average cost of doing all business.

Q. Doing all business, or all freight business?

A. All freight business.

Q. I assumed in the question that the expense of doing the two different classes of business was the same. The question added a different element, the expense of doing the State freight traffic was the same as doing the interstate traffic?

623 A. As an illustration of a principle, I don't think there is any difficulty in your question.

Q. Assuming the correctness of the facts stated in the question, the percentage of State freight expenses would be determined by taking the proportion of all the freight expenses that the earnings upon State freight bore to all of the freight earnings?

A. Is that putting your question in another form?

Q. No sir, it is the same thing.

A. Then let my answer stand on that.

Q. But, Mr. Sturgis, if the rate received by the company for the handling of State freight was twice as large per ton per mile as the rate received for the handling of inter-state freight, what percentage of the $4,000,000 total freight expenses would you apportion as the expense for doing the State freight business, assuming that the expense of handling the two classes of freight was the same?

A. You say that the expense of handling the two classes of freight was the same. You mean the same as in the previous question?

Q. Yes. I think there is no ambiguity in the question; the expense of handling the two classes of freight being the same in proportion to the ton per mile. You might add "as in the former question."

A. Then your question would read:

If the rate received by the company for the handling of State freight was twice as large per ton per mile as the rate received

624 for the handling of inter-state freight, what percentage of the $4,000,000 total freight expenses, would you apportion as the expense for doing the State freight business, assuming that the expense of handling the two classes of freight was the same as in the previous question?

Q. Yes. I think the question is clear.

A. I understand your question. The answer is 33⅓ per cent, instead of the 20 per cent used in the answer to the previous question.

Q. You mean to say, Mr. Sturgis, that if the rate received by the company for the handling of State freight was twice as much per ton per mile as the rate received for the handling of inter-state freight, that you would take 33⅓ per cent of the entire freight ex-

penses, if the expense of handling the two classes were the same. Wouldn't you take one-ninth of the expense of the doing of the freight business?

A. As I understand the proposition, it is the same as saying that if the earnings proportion is one-twentieth, and the ton miles constitute one-half as much, or one-tenth—no, my answer to that is wrong.

You say, if certain things are so, what proportion of the $4,000,000 would you apportion to the expenses? On what basis? On the basis of ton miles?

Q. As the expenses of handling all State business?

A. Twenty per cent. It would not affect the expenses
625 at all.

Q. Why, Mr. Sturgis, if it cost the company the same amount to handle a ton of freight a mile, in its State traffic, as it did in its interstate traffic, and yet the company received from the public twice as large a revenue per ton per mile on its State traffic as on its interstate traffic, wouldn't you take into consideration the fact that the company had to handle twice as much freight to produce a dollar in the inter-state business as it had to handle to produce a dollar in its State business, in apportioning the entire freight business to the state and inter-state business?

A. I don't think the expense changes at all. That is——

Q. I don't ask you what you think on that. I say, assuming that is true?

A. You are asking for my opinion.

Q. I am asking for a statement or calculation in determining expenses, based upon a larger revenue from the handling of a ton of freight a mile in State traffic, as compared with the revenue from the handling of a ton of freight a mile in inter-state traffic?

A. You say, "If the revenue received from the company for handling inter-state freight was twice as much per ton per mile as the rate received for handling inter-state freight——

Q. Per ton per mile?

A. —what per cent of the $4,000,000 would you apportion for the expense of doing the State freight business?

Q. Assuming that the expense of handling a ton of freight
626 per mile in the State business was the same as the expense of handling a ton of freight per mile in the inter-state business?

A. The testimony is entirely on the question of the revenue, and I neglected entirely the question of the number of ton miles, and, therefore, the answer to that question would be, it would be just the same, as I look at it. The relationship of the two does not make the expense greater or less. You have given the expense as $4,000,000?

Q. For the handling of State traffic?

A. Yes.

Q. In the handling of that State traffic?

A. No sir, not for the handling of State traffic. You have given 20 per cent for the handling of local freight.

Q. Assuming that the rate received by the company was the same

per ton per mile for the handling of State traffic as the rate received per ton per mile for the handling of inter-state traffic, then you would take 20 per cent of the entire expenses, and apportion to State traffic?

A. I would do that on the basis of the revenue.

Q. Leave out the revenue.

A. I can't.

Q. For the purpose of this question, leave out the revenue.

A. Then I do not intend to testify as to ton miles.

Q. Can't you assume the existence of the facts I have stated and give me your answer as an expert railroad account-
627 ant as to what would be the correct method of apportioning expenses?

A. No sir, I cannot, because you go on the supposition that I already know just what the ton mile is, and further than that, you go on the principle that it is exactly the same as revenue, proportionately.

Q. Can't you assume that for the purposes of the question?

A. That you wish me to make that assumption is not stated plainly in the question.

Q. I think it is. I say "assuming this to be true."

A. It would take me some time to work that out. I would be very glad to do it, but I will have to think it over and work it out. There are a good many per cents to be figured in there. This is just the reverse of some of the other propositions we have considered.

The MASTER: If I understand the proposition, to sum it up in a nut shell, it is about this, namely: that whereas the witness has testified that in his opinion as an expert the cost of earning a dollar by the transportation of local freight is three times the cost of earning a dollar by the transportation of all freight, he has left out of consideration the important element, namely, that he derives more revenue for transporting inter-state freight per ton per mile.

Gen. HADLEY: Yes sir, and I am endeavoring by this question to show that if that is so a different method of calculation must
628 be adopted in this case.

Mr. HAGERMAN: What destroys the whole thing is putting in "per ton per mile." He bases his statement upon actual revenue, every dollar received.

Gen. HADLEY: But it is not proportioned as to whether one mile or two miles haul.

The MASTER: The contention by Gen. Hadley is, that he has left out of the premises which led him to this conclusion, an important element which should be considered. That is your position, Gen. Hadley?

Gen. HADLEY: That is it.

Mr. HAGERMAN: Gen. Hadley is in error. We cannot assume as a matter of fact what it costs to earn a dollar, unless you take into consideration where the money comes from.

Gen. HADLEY: We will give you the profit that comes from handling State and inter-state freight, and show you how much more

the company gets per ton per mile from the handling of State freight than from the handling of inter-state freight.

Q. Mr. Sturgis, in the example I have given you, if the company had to haul twice as many tons of freight a mile to produce a dollar of revenue in its inter-state business, as it had to haul to produce a dollar in its State business, then, in apportioning the expenses of handling the two classes of business, shouldn't you take into consideration the greater number of freight per mile hauled in inter-state business as compared with the tons of freight hauled per
629 mile in the State business?

A. Certainly. There is an expense connected with every ton mile of freight you haul.

Q. Certainly, that is the point.

Now, if the rate received by the Company for the handling of State freight was twice as much per ton per mile as the rate received for the handling of inter-state freight, what per cent of the $4,000,000 of total freight expenses in the example I have given you, would you apportion as the expense for earning the $1,000,000 on State freight, or the $1,000,000 revenue on State freight, assuming that the expense of handling a ton of State freight per mile was the same as the expense of handling a ton of inter-state freight per mile?

A. I confess it looks to me like the same proposition; that is, the 20 per cent still.

Judge SPENCER: Let Mr. Sturgis take that question and figure it over during the noon hour. It is a complicated question.

At this point recess was taken until 2:00 o'clock p. m.

After recess on Monday, October 22, the following proceedings were had:

The WITNESS: May I have my answer to Question 4 read?

The MASTER: Certainly.

630 The questions and answers referred to are here read over to the witness.

Which questions and answers are as follows:

"Q. If the cost of earning a dollar on State freight is three times the cost of earning a dollar on inter-state business, and the rates upon State freight are twice as high per ton per mile as the rates upon inter-state freight, then is not the expense of handling State freight six times as much as the expense of handling inter-state freight, upon your theory?

"A. Six times as high, you mean, on the basis of ton miles?

"Q. Yes.

"A. It depends not upon the rates as it does upon what we actually get. It is not a thing, in my judgment, that can be figured from the tariffs."

Judge SPENCER: Do you mean if the relative cost of doing the business is affected by the increased rate you received on the business?

Gen. HADLEY: No sir, I do not mean to ask that. I do mean to

say that when you are figuring the relative expense according to proportion from the revenue derived, you have an absolutely
631 fallacious method of calculation, unless you determine that the same amount of tonnage on State freight produces the same revenue as the same tonnage on inter-state freight.

Judge SPENCER: I was trying to get it clear whether the relative cost of doing business between State and inter-state, did not always remain the same, although the rate per ton, or the rate received for doing the business, differed.

Gen. HADLEY: There is no question about that. It might cost three times as much to move a shipment of State business as of inter-state business, but the company gets $300 out of the State business, and $100 out of the inter-state business. I do not mean to say that the additional expense of handling State business is produced by the earnings; but it enters into the revenue. When you apportion the expense of handling freight business upon the earnings of State freight as compared with the earnings upon all business, my contention is that the rate per ton per mile by which the two classes of revenue are derived, must necessarily be a necessary element of computation.

Judge SPENCER: As to earnings, but not cost.

Gen. HADLEY: That should be determined upon a different basis, per ton per mile.

The MASTER: I think the position of the State very clearly appeared in answer to the interrogatory propounded by the Master this morning.

632 Mr. HADLEY:

Q. Are you ready for Question 8: I think that is the one you had at noon for examination?

A. In answer to the interrogatory submitted just before the noon adjournment, I will say, that the question is not a fair one with which to illustrate the relationship between cost on the revenue basis and cost on the ton mile basis; because the variations between the per cent the local earnings are of total earnings, and the per cent the local ton miles are of all ton miles, do not justify like variations in determining the per cent of expenses which should be set aside as applicable to local business. And, therefore, the direct figure given as the result of a mere mathematical calculation would be misleading.

Now, to make that clearer, the earnings will vary as the length of haul—will vary in proportion to the ton miles, as the length of haul on local shipments will vary, in any two different cases, proportionately to the length of haul on inter-state shipments. That is, if you present, as you have in these cases, questions which want merely mathematical figuring, it is easy to give the figures and work out the problems, supposing certain things are so. But there is no direct relation between the earnings and the ton miles, and the earnings on a ton mile may vary greatly on different cases owing to different conditions.

633 Q. There is an average earning per ton per mile upon State freight business, isn't there?

A. In any given case you can figure out an average without question. But that is not a constant one, that you can properly apply in setting out the general principle——

Q. I am not asking you to criticize it. I am asking you a question, to see if you understand the question properly.

The WITNESS: Mayn't I finish my answer?

The MASTER: Do not interrupt the witness.

A. In applying it to a particular case you can always get the earnings per ton per mile, but you cannot say they illustrate a general principle applicable to all cases.

Q. Let me ask you again, is not the average earning per ton per mile on all State business, a result that is capable of determination?

A. In any particular case, yes.

Q. Are not the rates charged and the revenue received by your company upon State traffic for the number of miles hauled facts which are known?

A. They can be determined in any particular case.

Q. Cannot the revenue received by your company, according to the number of tons hauled per mile on inter-state business, be determined?

A. In any particular case, yes.

634 Q. Assuming that an investigation of the books of your company for a certain period would show that the company received for the handling of State freight twice as much per ton per mile as it received for the handling of inter-state freight, what proportion of the $4,000,000 total freight expenses (in the example I have given you) would you apportion as the expenses for doing the State freight business?

A. I could not apportion them.

Q. You could not?

A. No sir, not without seeing the ton mile figures. I could not apportion them on a ton mile basis. I can apportion them, in my opinion, as I have, on the revenue basis, which I believe to be the fairer and more correct basis.

Q. Assuming, as I understand you have assumed, Mr. Sturgis, that the average rate per ton mile for State freight is the same as the average rate per ton mile for interstate freight; and that the earnings upon both classes of freight for a certain period, in the State of Missouri, were five million dollars, the earnings upon State freight being one million dollars and the earnings upon inter-state being four million dollars; and the expense of handling all the freight for that period was four million dollars; then, as I understand you, you have no difficulty in apportioning twenty per cent of that four million dollars of expenses to the State freight business?

A. If we accept the earnings basis, which seems to be the practical basis, and the one we have adopted in Ex. 1 and

635 since.

Q. Then you would apportion, on that theory, 20 per cent? That is correct, isn't it?

A. That is correct, as a minimum.

Q. Yes, as a minimum. Then assume the other theory, that instead of two classes of freight being handled at the same average

rate per ton per mile, that the company receives twice as much per ton per mile on the State freight as it does on its inter-state freight, can't you give the amount of $4,000,000 expense of doing all the freight business that you would apportion to the State freight, upon the assumption of the facts I have given?

A. In both your last questions you have assumed that I have stated that the earnings per ton mile would average the same on State and inter-state business. I have not so stated.

Q. I said in my hypothetical question, "twice as much." I put that question on the theory that the income to the company per ton per mile on the State freight was twice as much as the income per ton per mile on the inter-state freight. Then, apportion on that theory the amount of the $4,000,000 expense for doing the freight business, to State freight.

A. I want it distinctly understood, that if, as I understand it, in your two questions you have started out on the hypothesis that I said the earnings per ton mile were the same for interstate and local freight, that that statement is not correct.

636 Q. Didn't I call your attention this morning to the testimony you gave here when you first testified, in which you said that was so?

A. I didn't say it was so, according to the best of my recollection.

Q. What did you say?

A. Refer to the record.

Q. Didn't I ask you again if you wanted to stand by that statement, and didn't you say this morning that you did want to stand by that statement?

A. I said I would stand practically by the statement I made, but not the statement you made me make. There is a difference.

Q. What is the difference?

A. One is an exact figure, that is your interpretation. And my interpretation is practically saying that I know nothing about it, and it cuts no figure.

Q. I have not undertaken to comment upon your ability as an expert. I have treated you with consideration. I am asking you, what is the difference between your statement as made here before as to the rate at which inter-state and State freight is handled per ton per mile. Your statement was made this morning, in which you said you would stand by your former statement, and your explanation that you now want to make.

A. I believe the best way would be to read the answers to those questions, rather than to assume what was said.

637 Q. Do you, or don't you, in this three-fold ratio that you have given, consider or assume that state freight and inter-state freight are handled at the same rate per ton per mile?

A. No sir, I do not assume that they are handled at the same rate.

Q. What difference do you assume exists between the rate per ton per mile?

A. I have stated right straight through that I don't know what difference exists, because I haven't the ton mile figure.

Q. I asked you, when you were testifying before, this question: "In making your computations as to loss upon local business, under your theory of computation you have assumed that the revenue derived from the handling of State freight was the same per ton per mile as the revenue derived from the handling of through freight per ton per mile"? and you answered, "That is practically the way it works out": do you wish to stand by that statement, or not?

A. I would like to have my answer read that I gave you this morning.

Q. I would like to have an answer to this question. I think I am entitled to that.

The MASTER: It is not worth while to re-read that, unless some difference of importance occurs. You can answer the question now, Mr. Sturgis.

A. Undoubtedly, in making that reply, my opinion was that about the same ratio would apply in either case.

638 What I objected to a few minutes ago was your assuming that I stated it was exactly the same thing. I do not state it, because I do not know what it *is*. As has been explained several times, we have not the ton mile figures, and therefore I cannot tell whether it is the same or not.

Q. Then, if I understand you, at the time you gave that answer, your opinion was that the rate per ton per mile on State freight was the same as the rate per ton per mile on inter-state freight?

A. My idea was that there was probably not any great amount of difference; otherwise, I should have answered you distinctly, yes or no.

Q. Following the very answer to which I have called your attention, is the next question:

"That is a fact within your knowledge, that the average of State freight per ton per mile is much higher than the average inter-state rate per ton per mile?"

And you answered by saying:

"My presumption is that it is much higher."

Now, I understand you to say that when you made that answer, your idea was that on your theory of calculation the rate per ton per mile was the same? You must have thought that was so, and yet in your next answer you say, your presumption is that it was much higher.

A. Please give me that page.

Q. It is on page 224 of the record.

A. That answer, "That is practically the way it works out does, I see, imply that I had a knowledge of the ton miles, that

639 I did not have. Therefore, that answer must have been due to a misunderstanding of the question, or the next answer was. Because they appear on their face to be contradictory statements.

The facts of the case are, that the relations of the cost to the

earnings, and the cost in relation to the ton miles, is a thing I do not know.

Q. But in your calculation by which you figured out that the loss upon doing your State business was so much, did you or didn't you assume that the average rate per ton per mile received by your company for handling the State traffic was the same as the average per ton per mile for handling inter-state freight?

A. I did not take it into consideration.

Q. Didn't you assume that it was the same, or that it was more or less?

A. I took it entirely on the basis of the earnings.

Q. Did you assume that the earnings on the State freight business were produced by the same proportion of tons handled per mile, as the earnings on the State business bore to the earnings on the inter-state business?

A. Ton miles did not enter into my calculation.

Q. Did you assume that the same number of tons per mile of State freight was handled as compared with the number of tons per mile of interstate freight handled, as 19 and 79 per cent bore to eighty and a fraction?

640 A. Ton miles did not enter into my calculation, so I could not have figured it that way.

Q. Do you mean to say that in your calculation by which you gave it as your testimony in this case that the loss to your company upon the hauling of State freight in the State of Missouri was $1,700,000 of money in 1904, you did not reckon with the fact as to whether you got three times as much per ton per mile for hauling your State traffic as you did per ton per mile for hauling your inter-state traffic, or whether you got the same rate per ton per mile for handling the two classes of freight?

A. I did not take the ton miles into consideration.

Q. And if it should develop in this case that the average rate per ton per mile that the Burlington Road gets for handling its State traffic is two or three times, or larger even, than the average rate per ton per mile that it gets for handling its inter-state business, then your contention is, as I understand it, that that would not affect in any way your opinion as to the correctness of your calculation, showing this loss of $1,700,000?

A. It might, to some extent.

Q. To what extent, if you did not reckon with the fact of whether you got three times as much per ton per mile for hauling State traffic as you did for hauling inter-state traffic?

641 A. If it should appear to be a very abnormal difference, it would. But I did not consider it cut any figure.

Q. If you did not consider whether it cut any figure, whether there was any difference or not, how would it make a difference if it were twice as much?

A. I don't think it depends upon that. The variations between the two, the local ton per mile and the interstate ton per mile, and the earnings on local and the earnings on inter-state vary regardless and independent of each other; therefore, the two bases can-

not be compared in the way you are trying to compare them. And in my judgment the basis of earnings is the better basis.

Q. I am not asking you as to your opinion of bases, but I am asking your statement, if it should develop that the average rate per ton per mile your company received——

A. I say you cannot properly compare the two units.

Q. Would that fact affect your opinion as to the two methods of calculation?

A. Your question directly implies a comparison of the two units.

Q. You say that in your calculation you did not reckon with the question of whether your company got twice as much money for hauling a ton of freight per mile in State traffic as it got for hauling a ton of freight a mile in inter-state traffic?

A. I did not consider it in the basis of revenue.

642 Q. How then, could it affect your judgment in the ratio of the three-fold expense, if it should now appear that the rate to the company for the handling of State traffic was three times as great per ton per mile as the rate for the handling of inter-state traffic?

A. If it should prove, for example, that we receive ten times as much per ton per mile on local as we do on inter-state business, it would show that the conditions were very much more extreme than in your judgment they are. And I should want to refigure my calculations if any such thing proved to be the case.

Q. What is your judgment that they are?

A. You mean——

Q. As the relation per ton per mile on the two classes of freight.

A. It is the merest kind of a guess, but I should say—on the average for all the business?

Q. Yes?

A. I cannot give the figure, even in a guess.

Q. Is it your idea that it is higher now per ton mile average on State than on inter-state freight?

A. I don't believe it is much higher.

Q. What has occurred to change your opinion as expressed here, since the last hearing?

A. I have not had any opinion upon the question of earnings per ton mile.

Q. Do you desire to correct this answer: you were asked this question, "The average of State rates per ton per mile is much
643 higher than the average inter-state rate per ton per mile;" and your answer is "My presumption is it was much higher;" Do you wish to correct that statement, or do you wish to stand by it?

A. I wish to correct the answers to those two questions on page 223 and 224 because, as I stated, they are evidently made under a misunderstanding of the question. Otherwise the two, one following directly after the other, would not have been given in contradictory form; because I could not change my opinion in the space of a minute, most certainly. The fact is that, so far as the question of what the earnings are per ton per mile, I do not know.

Q. Is it now your idea that they are much higher upon the State than upon inter-state freight?

A. I don't know.

Q. Did you have that idea when you gave your testimony before, or did you wish to express that idea when you gave your testimony before, when you said "My presumption is it is much higher"?

A. I have just explained that those two answers were evidently made under a misapprehension; and, therefore, what they say there is a contradiction, probably owing to a misunderstanding of your question.

Q. When you said, in answer to the concrete question, that it was a fact within your knowledge that the average rate per ton per mile on State freight was higher than the average rate per ton per mile on inter-state freight, you say now you did not comprehend what that question meant?

A. Evidently I did not, because I knew nothing about—

644 or, rather, I do not know what the earnings per ton mile were.

Q. Do you wish to correct this statement, as being inaccurate, made by Judge Spencer, immediately preceding your answer——?

A. No sir, I should hate to correct the Judge.

Q. I mean, correct the accuracy of the statement: "Judge Spencer: I understand that if the local rate is higher than the through rate, ought not that be considered in arriving at the loss or profit on the local business. I should not suppose there would be any question about that."

Judge SPENCER: A profit on doing the business.

Gen. HADLEY: I am asking him the question, and not an explanation from you, if you please.

Q. Is that statement correct?

A. That is the Judge's own remark on it.

Q. Was that your idea of the proposition at the time you gave your testimony?

A. If it was a very large difference, as I illustrated a few moments ago by saying if it were ten times as great, then I should judge I would have to refigure my proposition.

Q. Why, if you never considered the difference in average rate per ton per mile on State as compared with inter-state traffic, would you want to revise them if it were large, and not revise them if it were small?

A. Because that would be an index of different conditions than those I understand to exist.

Q. What do you understand to exist?

645 A. My understanding is about the general condition of the business?

Q. What is your understanding as to the relation between State rates per ton per mile and inter-state rates per ton per mile?

A. Nothing exactly as to State and inter-state rates per ton per mile, because I told you I don't know them. But in them I under-

stand the average rates, and the question of two terminals as against one half a terminal.

Q. Haven't you said that if you found the rates were ten times as high on State as on inter-state rates per ton per mile, it would be at variance with your present opinion upon that point: Now, I ask you frankly and fairly to state what is your present opinion upon that point?

A. I don't know that ten—no, I won't say that. I have stated what my present opinion is; that it is a question of revenue entirely; and my figures are given on the basis of the revenue, the expense of earning a dollar, as stated by the Judge at the previous hearing.

Gen. HADLEY: If your Honor please, I cannot put my question any more clearly and I ask that your Honor direct the witness to answer the question, and not enter on an argument on his theory of calculations.

The MASTER: Let the question be read, if you think it has not been answered; and make another effort, Mr. Sturgis.

Previous question read to the witness.

A. I don't know what the relationship is.

Q. Have you no opinion upon that subject at all?

646 A. To guess at it, I should say certainly less than twice, if that is near enough a margin. I would not want to guess closer than that.

Q. Has anything occurred since you gave your testimony here the last time, to change your opinion upon that subject?

A. Nothing whatever.

Q. Mr. Sturgis, using the example I have given you, of $1,000,000 revenue upon State freight, and $4,000,000 upon inter-state freight, and $4,000,000 expenses; and assume that the rate per ton per mile upon State freight was twice as high as the average rate per ton per mile on Inter-state freight; it would be necessary in that instance for the company to handle twice as many tons of freight per mile to earn a dollar in its inter-state business as in its State business, wouldn't it—to bring in a dollar of revenue, I mean, when I say "to earn"?

A. No sir, not necessarily. It would depend so much on the condition of traffic and the average length of the haul.

Q. I am not asking you to apportion the expense.

A. I thought you were.

Q. No sir, I distinctly said, the revenue that would be brought in. I say, if the rate charged by the company for the handling of State freight per ton per mile was twice as much as the rate charged and received for the handling of freight per ton per mile on inter-state business, it would be necessary to handle twice as much

647 freight to produce a dollar in revenue in State business as to produce a dollar in revenue on inter-state business, wouldn't it?

A. For the same length of haul and same class of freight yes.

Q. Then, in order to produce $1,000,000 of revenue, assume that you would have to haul 1,000,000 tons of freight as an example.

Now, in order to produce $1,000,000 of revenue on inter-state business, you would have to haul 2,000,000 tons of freight, wouldn't you?

A. No sir, not necessarily.

Q. Not if the rate was doubled on the state tonnage haul what it was on the interstate tonnage haul?

A. It might vary very considerably in any two cases. Here is one case of 2,000,000 and one of 1,000,000: But there are all kinds of differences.

Q. I am not asking you to state the relation between cost and revenue? I am asking you simply as to the revenue received by the company from the two shipments.

If you had to haul within the state of 50 miles, upon which you received on hauling a car $50; and received on hauling the same car that distance on an inter-state shipment $25, you would have to haul two cars in inter-state business in order to produce as much revenue as you would get on the one car in the State business. Isn't that simple?

A. If the same rate applied.

Q. Certainly. If you had a double rate on State, as com-
648 pared with inter-state business?

A. If the second shipment was between the same points and of the same class, etc.?

Q. Certainly. Then, in order to produce the $4,000,000 revenue on the inter-state business in the example I gave you, you would have to carry 2,000,000 tons of freight to produce the first million dollars; and in order to produce the second million dollars you would have to carry another 2,000,000 tons of freight; and in order to produce the third million dollars, you would have to carry another 2,000,000 tons of freight; and in order to produce the fourth million dollars you would have to carry another 2,000,000 of freight, which would make it necessary to carry eight million tons of freight to produce $4,000,000 of revenue in the inter-state business; where you would have to carry only one million tons of freight in order to produce $1,000,000 in State freight business, assuming that the rates were twice as high on the State business as upon inter-state business: That would be correct?

A. That seems to be correct, so far as revenue is concerned.

Q. Then the total tonnage in that example would be 9,000,000 tons of freight?

A. I haven't followed your figures exactly.

Q. It would be 8,000,000 tons of inter-state freight, and 1,000,000 tons of State freight?

A. You would have the greater revenue?

649 Q. Yes, on the State business twice the rate.

A. On inter-state you would have twice as much revenue.

Q. I said, carry twice as much tonnage?

A. That would be twice as much revenue, wouldn't it?

Q. I am stating that the rates on State freight were twice as much per ton per mile as on the inter-state tonnage?

A. I grant you that.

Q. That makes the total tonnage haul, in the example I have given

you, 9,000,000 tons. The State tonnage would be one-ninth of the total tonnage, wouldn't it?

A. That is coming back to the example in your question you raised before lunch, and the answer is 1/9th, or you asked for per centage —it is eleven and one-ninth per cent.

Q. If I have succeeded, after consuming all this time, in making myself clear, I will ask the question again: If the rate received by the company for handling State freight was twice as much per ton per mile as the rate received for handling inter-state freight, what per cent of the $4,000,000 expenses in the example I have given you, would you apportion for the expense of doing the State freight business: wouldn't you take one-ninth of the expense of doing the State business, or eleven and a fraction per cent of the $4,000,000?

A. The statement just now was in regard to the relationship of the tons and the revenue. Your question there (indicating memorandum) brings it into a question of division of expenses, doesn't it?

Q. The question, I think, is entirely clear. At least, I endeavored with great care to make it clear to you?

650 A. You ask about the division of expenses, don't you?

Q. Of the amount of expense, or the percentage of expense in the example given, that you would apportion to the doing of State business, assuming that the fact stated in the question, and in my other questions, are true?

A. As I figure it out it would not apply to the expense.

Q. You figure it out, then, if I get your idea clearly, that if the rates charged by the company upon the State traffic are twice as much as the amount charged upon inter-state traffic, and the tonnage hauled would be correspondingly as large to earn a dollar in inter-state traffic as to earn a dollar in State traffic, that then that proportion between the tonnage should not enter into the apportionment of the total freight expense between the doing of State business and the doing of inter-state business?

A. I confess I don't get at the bottom of your question.

(Last question read.)

A. Is that the question that you have there (indicating memorandum)?

Q. Yes.

A. Let me see that again. I am sorry to take up this time, but I don't know how to answer that question (after examining memorandum of question). In my testimony I have given, it is my opinion, that the expenses were apportioned to the revenue. Therefore the expense would not vary according as the ton mile might vary.

Q. "As the ton mile might vary;" what do you mean by
651 "ton mile might vary?"

A. As the number of ton miles would vary proportionately between State and inter-state.

Q. That is, if the company had to handle two tons per mile in order to earn a dollar in their inter-state business, and only one ton per mile to earn a dollar in their State business, that would not affect

your calculation in any way, that it cost three times as much to earn a dollar on State as on inter-state business?

A. It is the same question varied?

Q. I say, would that affect your judgment in any way?

A. We all know it costs more to haul two tons a mile than one ton; there is not any question about that.

Q. If the rate per ton per mile on State business is twice as much as it is on inter-state business, then that figure would enter into any calculation on which you determine the relation of only State traffic, and the revenue derived from State traffic?

A. In answering this question, I say the expense set aside on this $1,000,000 of local business, if it is 80 per cent, we will say, for example, which means $800,000, that you do not increase or diminish that figure in my testimony by taking a supposed case of variation of the number of ton miles.

Q. If, in order to earn the $1,000,000 in the example given you, it is necessary to handle only 1,000,000 tons of State freight;
652 and in order to earn the $4,000,000 it is necessary to handle 8,000,000 tons of inter-state freight, wouldn't you take 1/9th of the total expense of doing the freight business as the expense of doing the State business?

A. No sir, I should not.

Q. Why not? Assuming the expense of handling a ton per mile was as great in handling State business, as in handling it in inter-state business?

A. But they are not the same.

Q. Assume they are, as you did in your original calculation, when you took 20 per cent of the entire freight expenses, before you applied your three-fold ratio?

A. I answer that I don't believe that question can be answered.

Q. You say you cannot answer a question such as I have put to you, assuming the facts to be true, that the company has the same expense in handling a ton of freight in its State traffic, as in its inter-state traffic, and yet it gets twice as much revenue from it?

A. The moment you affect the tonnage, you affect it all around.

Q. And yet, if the expense per ton per mile is the same in State business as in inter-state, and you have to handle two tons per mile in inter-state business to produce as much revenue per mile as you would get in State business, then your expense would be double?

A. You are supposed to double the amount of tonnage in your inter-state business.

653 Q. To produce a dollar of revenue?

A. You propose, whatever you do, to double the amount of tonnage?

Q. Simply to produce more revenue?

A. Then you change the whole question of expenses. You can do a wholesale business on a different basis than you can do a retail business.

Q. I am not asking you to apply it to your calculation, but to apportion it, in the example I have given you, to State business.

A. I cannot follow you through the mazes of your question, tak-

ing so many things for granted. I am not able to answer that question in the way you want it answered.

Q. You took this question (which appears on page 8 of these typewritten questions I have prepared) at twenty minutes past twelve, and kept it and studied it, didn't you?

A. I got my lunch, and attended to some matters, but I studied over that question.

Q. And after coming back here, after recess, you say you are unable to make any other answer than what you have given to that question?

A. I say I went through the arithmetical computation that you put there, and gave you the figure of eleven and one-ninth per cent, or one-ninth. But so far as applying it to the actual facts on the railroad business, and in line with my testimony on the expense of doing the business, I say I am unable to answer your question.

654 Gen. HADLEY: I ask that the paper be identified as having been referred to.

The paper referred to is marked "Memorandum referred to by C. I. Sturgis on Oct. 22, 1906."

Q. One other question, Mr. Sturgis, relating to that feature, and then I am done.

Assuming that the average cost of State freight is proportionately three times greater per ton per mile than the cost of handling inter-state freight, and assuming further that the revenue of the company from handling State freight is three times more per ton per mile than its revenue from handling inter-state freight, then wouldn't it be true that the expense of handling State freight is correctly determined by taking that percentage of the total freight expenses which the earnings on State freight bear to the entire freight earnings?

A. Prefacing the answer with the statement that as I understand it, this is the same as the first question you asked today, what you say is true.

Q. Mr. Sturgis, you have testified before that you divided, in determining the amount of inter-state freight business done in Missouri, the earnings upon inter-state freight by assigning the proportion to Missouri upon a mileage basis, didn't you?

A. Yes, sir.

Q. Assuming that the rates in Iowa and Illinois are from 25 to 35 per cent lower than they are in Missouri, and
655 that your division of freight earnings have been on a pro-rate by-rate basis, that would increase the earnings on inter-state rates to be assigned to Missouri?

A. If the division was on a pro-rate of the rates authorized locally in the two states, that follows as a fact.

Q. Your earnings upon State business were determined from an examination of the way-bills themselves, weren't they?

A. Yes, sir.

Q. If by apportioning the inter-state earnings to Missouri upon a pro-rate by-rate basis, instead of a mileage basis, you would increase

the amount of the earnings upon inter-state freight, that would result in the earnings upon State freight being a smaller proportion of the total freight earnings than appears in your statement?

A. Yes sir.

Q. That, in turn——

A. Provided the local rates in Missouri are higher than in Iowa and Illinois, as I believe them to be.

Q. Have you any information upon the proposition that they are from 25 to 35 per cent higher?

A. No sir, I haven't any information upon the per cent but have simply heard that they are higher.

Q. Then if the percentage of earnings upon State freight was, by this other method of calculation, smaller as compared to all the earnings upon freight, that would reduce the amount of the expenses to be assigned to State freight, wouldn't it?

656 A. I should not consider that a fair basis of calculation.

Q. If you would increase the total earnings——

A. If the fact remains, as you stated it, if you could use the basis of the revenue in determining the expenses, it would follow that the expenses would be lower?

Q. Certainly.

A. But it would not be a fair proposition.

Q. Why not?

A. Because I don't believe that on an inter-state shipment between two states, between Illinois and Missouri, even though Illinois rates may be lower—that is, I refer of course to the public tariffs of the Commissioners,—that it would be justifiable to apportion this revenue, and determine Missouri's revenue on anything other than a mileage basis.

Q. You have made an argument against that method of apportionment; but assuming it should be determined by those having the right to determine it, that it would be proper to do it in that way, that method would result in decreasing the expense that would be applied to doing the State business?

A. If you applied the revenue basis, it would.

Q. Your method of apportionment?

A. Yes sir, but in taking an extreme case, if you should say that on all inter-state business Missouri should get all the revenue,

657 then I don't believe you would be justified in carrying out that principle of the revenue basis.

Q. You take and assign, as the expenses for doing the State business that per cent of your entire revenue which the revenue from State business bears to the entire revenue of the company. Now the revenue from State business being definitely determined by your way-bills, when you increase by the method of dividing the inter-state rates, the total amount of revenue in Missouri, you necessarily decrease the proportion of expenses to be assigned, don't you? That is a plain mathematical proposition, isn't it?

A. Yes, sir, a plain mathematical proposition, to which I have already assented. But if, in determining the total amount of the Missouri earnings you took of the inter-state earnings your ninety-

nine per cent, then you would reduce the cost of doing the local business to an absurd point; and you could not carry out that theory of the application of the proportionate revenue basis.

Q. There wouldn't be any reason for giving Missouri 99 per cent unless 99 per cent of the whole pro-rate was in Missouri?

A. In my judgment, there is no basis for dividing it on the basis of the local rates in the two states.

Q. Did you ever know of a through rate which was less than the sum of the two local rates?

A. Yes sir.

Q. It is the rate exception, isn't it?

A. It is some years since I have actually handled rates, but there used to be a great deal of it.

658 Q. Isn't the real objection of your company to these rates fixed by this Bill, that they would lower the inter-state rate?

A. As I understand that is the position of our traffic department.

Q. Consequently it is their high rates on local tariffs in Missouri that enables your company to charge a higher inter-state rate, isn't it?

A. I am not an authority on rates, but I understand there will be witnesses here who will be competent to answer you.

The MASTER: That position does not appear upon the face of the Bill, does it, Mr. Hadley?

Gen. HADLEY: No sir.

Q. Can you give a single authority or decision of the courts in which the fact that on a State shipment two terminals were used, was given as a reason for additional expense on handling State traffic as compared with inter-state traffic.

A. I could not specifically refer you to any one decision of the courts upon that question.

Q. In your reading of the testimony of the experts, which you said entered into your opinion upon this matter, and the reading of decisions, of the increased cost, if any, in handling State traffic as compared with inter-state, did you ever find a single decision of increased cost of handling State as compared with handling inter-state traffic?

659 A. There was testimony given, if I remember correctly, in the hearing in the recent Minnesota case.

Q. The hearing now on,——

A. Or just finished.

Q. You had not read that testimony when you gave your testimony here before?

A. I had read some of it.

Q. The testimony had not been given then, had it?

A. It was given last summer, because in August I talked to one of the men who testified.

Q. You talked to him? Had you read the decision given by the court?

A. I had a copy sent me by one of the officials.

Q. Whose testimony did you read?

A. Mr. Gray's, of the Northern Pacific.

Q. Is that the only one in which you saw that feature referred to?

A. That is the only one I specifically remember. I presume that point was covered in South Dakota and the Nebraska rate cases, both of which I have read, the Nebraska case a number of times, although not for a year or more now.

Q. Do you recall now whether it was or was not referred to in that case?

A. I do not recall now whether it was or not.

Q. Are you familiar with the work of Beale and Wyman upon rate regulations?

A. Is that Judge Wyman, of Connecticut?

660 Q. I think so.

A. I read part of a book he wrote, but not the whole of it.

Q. Did you read the statement contained in paragraph 460 of that work (I refer to that for identification) that the cost of maintaining a plant as distinguished from the cost of conducting transportation is a constant one and can be justly divided between the different kinds of traffic in proportion to their volume? Do you remember reading that statement?

A. No sir, I do not.

Q. Do you agree to that statement?

A. I should think it depended upon the use put to it. And that in the case of a terminal station, taking the shipment once, would not be fair, and probably not in the idea of the man who expressed the opinion, that he means that at that particular point you have a particular tonnage handled in that particular house; and if that same tonnage was handled in another house, at another point, you take that same tonnage over again.

Q. He says that the expense of maintaining a plant as distinguished from the cost of conducting transportation should be apportioned between inter-state and State freight business, according to the volume of the two: You don't agree with that?

A. The two businesses handled at that particular point?

Q. Handled on the entire system in the State?

661 A. If he meant in proportion to the two kinds of business handled in the whole business of the State, I certainly should not agree with him.

Q. Did you read the North Dakota case of Railroad vs. Keyes?

A. I read the North Dakota case.

Q. The case of the Northern Pacific Railroad vs. Keyes which is reported in the 91st Federal Reporter?

A. I don't know that.

Q. Didn't you find the same statement there that the expense of maintenance of plant should be apportioned between State and inter-state business, in proportion to their volume?

A. I don't recall whether that was there or not. If that statement was there, I should not understand it as meaning the whole volume of State and inter-state business in the State: I should understand it as applied to the particular business in the particular building or structure, or whatever it was.

Q. Isn't the whole equal to the sum of the parts?

A. As a general proposition the whole is equal to the sum of the parts; that we learned when quite young. But some of it has to be counted twice, perhaps oftener, perhaps three times.

Q. But the traffic remains the same whether it is handled once or twice?

662 A. You are mistaken. Suppose a local shipment starts out from St. Louis and is handled in the local freight office, that tonnage must count right there. It goes to a junction point, perhaps, and is handled through a freight house again.

Q. And is still State freight?

A. Yes, sir. And there it comes in on a proportion of that house, and is handled there. Then it goes forward to its destination and is handled a third time in a freight house. That is three times it is counted. Whereas, inter-state business might not enter a single one of those freight houses at all.

Q. Can you give a single illustration where a shipment could get from one point in Illinois to Brookfield or Hannibal, say, without being handled by the freight house at Brookfield or Hannibal? If you know anything about inter-state shipments, you know that an inter-state shipment must necessarily be handled at those points, mustn't they?

A. No sir. The train might be broken up and a car switched into another train. But that is a very small part of the cost of handling a car at terminals.

Q. Are you speaking now of less than car-load lots? You don't mean to say that State car-load business would be taken out of the car and put into the freight house, do you?

A. Yes, sir, it might be put into a different car, to be handled over different branches.

663 Q. A car-load of freight taken out of your car at Brookfield and put into another car, when it was destined to a point between Brookfield and Cameron?

A. Yes, sir, and if it were going to——

Q. Assuming it is a car-load shipment?

A. Assuming it is a car-load shipment, it certainly would not be carried to a freight house.

Q. Assuming it was an inter-state car-load shipment, the number of times it would be handled at the different terminals would apply the same as on a State shipment, in determining the volume of the two kinds of traffic?

A. No sir, I don't understand so. You mean in measuring the use of the building, or the structure along the line of the road?

Q. Yes.

A. No sir. The inter-state shipments might not be handled at all; and it might be handled once only. Whereas, the State shipment is always handled twice, and sometimes three times.

Q. Assuming a case like this. Where there is a shipment for a distance of one hundred miles, 50 miles of which is in Missouri and 50 miles is in Illinois; it costs the company to handle that shipment $55, $5 being the expense incident to a terminal at each end of the shipment; What would be the expense per mile of that part of the shipment that is in the State of Missouri?

A. I understand you that that total expense of that shipment through from its point of origin to its point of destination is $55?

664 Q. Yes.

A. The $5 covers expense of both terminals.

Q. Yes, $5 for the terminal at the point of inception, and $5 for the terminal at the point of destination?

A. You take that simply as an arbitrary example?

Q. Yes, as an arbitrary example.

A. Starting on that basis, what is your further question?

Q. What is the expense per mile of handling that shipment?

A. It would be divided by 50 per cent, and you get it.

Q. 50 cents per mile?

A. If the distance is the same in each state, and the conditions are as stated by you.

Q. The expense would be 50 cents per mile?

A. I haven't followed your exact figures, but it would be just half of the $55.

Q. The average length of a freight division is about 90 to 100 miles, isn't it?

A. There is 160 miles in the division from just outside here to Galesburg, and it is about 115 miles to the next one.

Q. I don't care about that, if you don't know?

A. They run a great deal higher than you say.

Q. You don't know what they are in Missouri?

A. No sir.

665 Q. Assuming another case, where there is a shipment for 100 miles. 100 miles of a car-load of freight wholly in the State of Missouri, which had two terminal handlings, at the point of beginning and at the point of ending, and assuming that it cost the company $55 to handle that shipment, $5 being for the expense of the terminal at each end of the line, what would be the expense per mile to the company for the handling of that car?

A. It seems you must have some other motive. All you have to do on the supposed case you state, which has no figures in it as a fact, and $5 set aside for terminals, all you have to do is to multiply the $55 by the 100 miles and you get an answer to the proposition you state. But it is not a fact. We do not get any such revenue.

Q. What would be the answer? You don't have anything to do with what others do?

A. $50 divided by 100 miles gives 50 cents a mile.

Q. In determining the difference between handling State and inter-state freight, the element of terminal charges depends upon the number of terminals at which the different kinds of freight are handled, and upon that alone, doesn't it?

A. No sir.

Q. Upon what else does it depend?

A. It depends upon the different kinds of terminals, the amount of work done in the different terminals, and the expense at each terminal. It depends upon a number of different things.

666 That is, expense of terminals is not proportioned 1 to 2 in all cases.

Q. I know, but how can you say that the expenses of the terminals which relate to State shipments are any greater or as great as the expense of terminals which relate to inter-state shipments?

A. The State shipments are always at least two and sometimes three terminals; in the inter-state shipments they probably average about one-half a terminal.

Q. One-half a terminal for an inter-state shipment?

A. Yes sir. For instance, if inter-state business is divided 50 per cent between business going right through the State, and 50 per cent to business which has one terminal in the State—if that happens to be the proportion because straight through the State is a larger proportion—but for our example we will say it is proportioned 50 and 50, then it averages just one-half a terminal.

Q. You say there could be an inter-state shipment going from Illinois to Missouri without having two terminal expenses to be reckoned with?

A. Two terminals in Missouri, yes.

Q. But there are two terminals on the shipment to be considered?

A. Of course there are two terminals on the shipment.

Q. Doesn't the terminal expense have to be deducted in determining the expense on the inter-state shipment to be assigned to Missouri?

The MASTER:

667 Q. Suppose the shipment went through the State of Missouri, without stopping at all?

Gen. HADLEY:

Q. Did you ever know of a single case of such a thing as that occurring?

A. Yes sir.

Q. Where?

A. Our estimate is that perhaps one-half the business, or more, goes right straight through the State.

Q. And it never stops?

A. Of course it stops, but it is not handled at a terminal.

Q. Didn't it have a terminal where it originated, and another where it ended?

A. Yes, perhaps one in Chicago, and another in Kansas.

Q. Say that a shipment went from Chicago to Topeka, Kansas, through the State of Missouri, and the total expense was $35, $2.50 being for the terminal in Illinois and $2.50 being the terminal in Kansas?——

A. This is clearly a supposititious case?

Q. —would you have to deduct the expense of the terminals from the entire expense of the shipment, before you make any apportionment to the State of Missouri?

A. That is what I practically did in all my testimony as to the details of the operating expenses.

Q. Yes; and the shipment wholly within the State of Missouri, which is handled by two terminals, the expenses incident to the

terminal handlings have to be deducted from the entire expenses, be-
before you apportion the expenses of that shipment?
668 A. No, sir, they do not. We do not deduct them at all. They are part of the expenses. I do not understand your continual reference to deducting terminal expenses.

Q. In calculating what the expense is for handling that shipment per mile?

A. Every expense connected with handling that is treated in the expense per mile.

Q. Certainly. But don't you, in determining the apportionment of the amount received by your company for hauling a car of freight a mile, whether it is a State or inter-state shipment, you have first to deduct the terminal expenses incurred, either within or without the State—the amount of expense per mile?

A. No, sir, I do not.

Q. You do not first deduct your terminal expenses?

A. No, sir.

Q. When do you deduct them.

A. I don't deduct them.

Q. You do not count them in at all?

A. Certainly, but we consider the expenses as a whole.

Q. You consider them in the apportionment of the expenses of the shipment, don't you?

A. They are part of the expenses of the shipment.

Q. Certainly. Now, are not your terminals, the most ex-
669 pensive terminals, those that are maintained in the large business centers?

A. Yes, sir.

Q. And are not those the terminals at which most of the interstate freight is handled?

A. Presumably, yes.

Q. At such places as Kansas City, Hannibal, St. Louis, Chicago, Omaha and Council Bluffs?

A. Yes, sir.

Q. But the terminals at which most of the State freight is handled would be terminals like the terminal at Cameron and some towns of that size, where land is of small value?

A. Probably, for one of the terminals indicated.

Q. Then, the terminals at which the State freight is handled cost the company less. Doesn't that decrease the terminal expense proportionately upon State freight as compared with inter-state freight, assuming that the same number of terminals are involved in the shipment?

A. I am not willing to accept your judgment that they cost the company less; because while they do cost the company less, in the aggregate, I think you will find in some cases they cost the company more for a given unit of shipment.

Q. Just for once assume that my statement is correct?

A. It probably is not correct.

670 Q. But assume that it is correct?

A. You have asked me to assume a good deal this afternoon in my answers.

Q. Assuming that the expenses relating to State traffic are the least expensive to the company, for the original expense and the maintenance, then is it not true that the terminal expenses related to State traffic are proportionately less than the expenses relating to inter-state traffic, assuming the same number of terminals in reference to a shipment?

A. That seems to follow, after you assume, as you say you do, that the expense for a given unit at terminals on State traffic is less than the expense for a given unit used by inter-state traffic.

Q. Mr. Sturgis, my recollection is that you testified that the average haul of State freight was ninety miles?

A. Approximtely that.

Q. And the average haul of inter-state freight was one hundred and thirty-four miles, wasn't it?

A. That is my recollection.

Q. And you also said that freight hauled fifty miles simply paid for itself, dollar for dollar?

A. I think I did not state that. I stated that I believed that a shipment had to move about fifty miles in order to pay the expenses of the terminals. Or, perhaps, I can give a better answer
671 than that, that there was no money made in a haul of a local shipment of fifty miles, or under, provided it was charged up with its full proportion of expenses.

Q. I will read you what you said before, and perhaps you will understand without so much statement. On page 261 of the record you said, "The cost for fifty miles is about one dollar spent for one dollar earned. Ordinarily freight hauled less than fifty miles renders no net revenue whatever to the company. That cost for fifty miles hauled is about one dollar spent for one dollar earned."

A. Are you talking about terminal expenses?

Q. No sir, you were talking about the expense of conducting freight.

Judge SPENCER: As I understand it, that was due to terminal charges.

Gen. HADLEY: I don't care what it is due to. I want to know if a shipment which travels fifty miles just about pays for itself?

A. In my judgment a shipment of just fifty miles, if charged with its proportion of the expenses will not pay. It is not to the interest of the company to take it, except as extra business.

Q. But when you get over fifty miles, you get on a revenue producing basis?

A. No, sir, I don't think you do.

Q. If the cost for fifty miles is equal to the expenses,
672 then the earnings for over fifty miles is above the expense, isn't it?

A. May I quote my testimony there "that the cost of fifty miles is about one dollar spent for one dollar earned. Right on the question of terminals alone, without any other account being taken into consideration, that is true." You did not read my whole answer.

Q. You do not mean to say that it is part of an answer that I read? Do you mean to say that I did not finish the sentence I read?

A. I was just reading the sentence you did. And it gave me a wrong understanding of my answer given before.

Q. You do not mean to say that I did not read the whole sentence in what I read, do you?

A. There is no insinuation that you did on purpose. But I mean to say you did it.

Q. But——

The MASTER: There is no occasion for that.

Gen. HADLEY: But it stands on the record, your Honor.

The MASTER: We will try to settle the controversy between the Burlington Railroad Company and the State before we attempt to settle any controversies between counsel and the witness.

Gen. HADLEY:

673 Q. Do you wish to change the testimony you gave before, that a shipment fifty miles produces a dollar of revenue for a dollar of expense?

A. I think the record as it stands is satisfactory on that.

Judge SPENCER: I should like then to refer to the same record.

The MASTER: I think I understand it perfectly. It is proper cross-examination; I see no objection to it.

Gen. HADLEY:

Q. Then, if the average haul is ninety miles, and freight hauled over fifty miles pays a profit, then why is not State freight remunerative ta the company?

A. I don't believe that State freight hauled fifty miles pays a profit.

Q. Then, do you wish to change the testimony you gave here the last time, where you stated that freight hauled fifty miles would earn dollar for dollar?

A. I would be glad to have the two sentences, the one read by you and the one read by me, which follows immediately after, coupled together.

Q. Coupled together?

A. In order to obtain a proper interpretation.

Q. Couple them together and answer me the question, whether freight as an average proposition, in the State of Missouri,
674 that is hauled fifty miles, produces revenue simply equal to expenses, nothing less or more?

A. It produces less revenue than would equal the expenses.

Q. How long does a haul have to be, in order to produce revenue proportionate to expense?

A. The average shipments, or State business, if there is allotted to them their proper proportion of the expense, do not return any revenue at all, but constitute a direct loss, and the only way a profit can be figured is by regarding that State business as additional business, after you get your plant running.

Q. How long have you entertained the opinion that by reason of the expense of earning a dollar in State business being three

times greater than the expense of earning a dollar in inter-state business, that State business was unprofitable?

A. As long as I have thought about the proposition.

Q. When did you think about it?

A. I have thought about it ever since the first case came up.

Q. When was that?

A. My recollection is that the Nebraska Rate case was back in 1893, wasn't it?

Q. Back in 1893 you thought of it?

675 A. That is the first place I can put my finger on and say that it occurred to me then. It probably is a matter I have always had more or less in mind.

Q. Since 1893, these thirteen years have elapsed, have you ever consulted with your transportation department to see why three times as much was not being charged on State freight as was charged on inter-state freight?

A. No, sir, because if figures were made they would be made by the auditor and we do not have that information—that is, we do not separate it between State and inter-state.

Q. Don't you know it to be a fact that prior to 1904 there were no rates fixed in the State of Missouri?

A. I don't know that as a fact, no, sir. As I have stated, I have not followed that question.

Q. When you came to the conclusion that it required greater expense to earn money in State as compared with inter-state business, didn't you go to your transportation department to find out whether a proportionately large charge was being made per ton per mile on State as compared with inter-state business? Or, didn't you ever investigate that subject?

A. I have no recollection of a specific comparison having been made on that point, of the question of what the revenue proportionately was on the two.

676 Q. Here you are, auditor of the System, and you came to the conclusion in 1893 that you were losing money on State business, because the expense of earning a dollar in that business was three times as great as earning a dollar in inter-state business, and yet you say you never took occasion to inquire whether you were getting three times as much revenue per ton per mile on State as on inter-state business?

A. We do not keep that figure, and it is very expensive to get it. If we had kept it, I would have been the source of that figure and my department would have made it.

Q. Don't you think it is fair, that if the expenses on State freight in order to earn a dollar are three times as great as the expenses for earning a dollar on inter-state freight, the public ought to pay that difference, and your road ought to charge it?

A. I do not think the rates are based on that idea.

Q. When your company, from 1893 to 1904, have had no rates, assuming they had not, fixed in reference to State traffic, and no rates fixed on inter-state traffic, did you during that time make your

State rates three times as high per ton per mile as your rates upon inter-state traffic?

677 A. Certainly, the rates were not and are not made on that basis. Rates are made to encourage business and get as much as we possibly can.

Q. If the expense of earning a dollar in State business was three times as much as earning a dollar in inter-state business, why didn't you go to your transportation department and have your rates made accordingly?

A. It is disheartening to talk so much about business and then find it is not understood. If you apportion the whole expense, it amounts to that much. But if you consider it as extra business, you can afford to do it. Let me give you the old example of the extra passenger——

Q. You and Mr. Ladd argued on that.

But you did not raise the question with your transportation department, as to why the rates on State freight should not be made proportionately higher, when the expense of earning a dollar on State business was three times what it was to earn a dollar on inter-state business?

A. There was no reason for it, because it was considered as extra business.

Q. What right have you to class one kind of business as extra and let the other kind of business be classed as inter-state business?

A. It is a question of what rates we can get.

Q. You mean, your rates are apportioned without reference to expense?

678 A. Undoubtedly a different basis, and the reason, as I understand it—I am not an attorney—is that all business should be charged with its proper share of the expenses in determining the right of any party to produce the rates.

At this point the usual hour of adjournment having arrived, the further hearing of testimony is adjourned to Tuesday, October 23, 1906, at 10 o'clock A. M.

679 CHICAGO, ILLINOIS, *October* 23, 1906.

Met pursuant to adjournment as above, on Tuesday, October 23, 1906, at 209 Adams street, present parties as before, when the following proceedings were had.

The witness C. I. Sturgis, was temporarily withdrawn by consent of counsel.

HOWARD ELLIOTT, a witness of lawful age, being duly produced, sworn and examined, on the part of the complainant, testified as follows:

Direct examination.

By Mr. O. M. SPENCER:

Q. Please state your name?

A. Howard Elliott.

Q. Where do you reside?
A. St. Paul, Minnesota.
Q. What is your official position?
A. President of the Northern Pacific Railroad Company.
Q. What position, if any, did you hold prior to your present position?
A. I was second Vice President of the C. B. & Q. Railway Company and prior to that General Manager of what was known as the Missouri Lines of the C. B. & Q.; prior to that various positions in the freight, passenger and accounting departments of the
680 same property all of the C. B. & Q.
Q. In Missouri?
A. Yes sir.
Q. About how many years in all, were you connected with the C. B. & Q.?
A. Twenty-three years.
Q. You are acquainted with the line of the Burlington in Missouri?
A. Yes.
Q. And the character of business done by that road?
A. Yes.
Q. All its branches and all its stations?
A. Fairly well, yes.
Q. Has your service with the company enabled you to observe the relative cost of doing local and through business on the Burlington road in Missouri?
A. Yes.
Q. Is there in your opinion any difference in the cost of handling local freight and the cost of handling through freight?
A. Yes.
Q. What, in your opinion, is the relative cost or expense of handling the two businesses?
A. I think it is rather difficult to say exactly. I should say anywhere from three to six or seven times greater for local business as compared with through, depending on the class of the Branch
681 and the amount of business on the Branch.
Q. Will you please state briefly the elements that you think enter into the extra cost of doing local business?
A. Well, to begin with, the local business is generally all quite a short haul. In Missouri, for example, I should say there was a great deal of business that was handled less than fifty miles; so that you have a terminal charge for loading the local business at the initial point, and another terminal again a short distance away. So that your terminal charges accrue much more frequently for a given volume of local business than they do for a given volume of through business.
Then, a freight car in local service cannot be used to its maximum efficiency. A car that will carry, we will say, forty tons of freight, or even thirty tons of freight, in local business it is a common thing to have it carry from one to five tons of freight. So you are not

getting the full use of that particular part of the railroad company's property.

You do not get the full benefit of the capacity of the car by loading it in that way.

Then, when it comes to the movement of local business, on account of the short haul already touched upon, you do not get as much use out of the car in the twenty-four hours. It goes fifty or
682 sixty miles has to stop and be set out and be unloaded. Whereas, in through business it may work steadily for several hundred miles or more.

Another element is the fact that the so-called "local" or "way freight train" can not be loaded to its full capacity. You have to run the local train on main line and on branches, both, much of the time with a lesser number of freight cars back of the engine than the engine is capable of hauling. On a light Branch, you may see a way freight train with three or four cars in it, when the engine could easily handle thirty cars, but the business has to be moved, and you have to have your engine and all of your train crew to handle this small number, of cars, whereas on the through business you get the maximum efficiency of your engine and train crew every time you move them.

Q. Mr. Elliott, what is the increase of cost, if any, in operating the local train compared with the through train—I mean, as to the expense of the men in charge of the train? Have you had occasion to look into that?

A. I could not give you the exact figures now as to the relative wages. But in a general way the way freight wages are higher than the through freight wages. And there is very often more over-time on way freight trains, because of the loading and unloading
683 at the local station, and the train being a long time on the road.

Cross-examination.

By Mr. H. S. HADLEY:

Q. When did you leave the employ of the Burlington?

A. October 21, 1903.

Q. And did you go to the Northern Pacific from the Burlington?

A. Yes sir.

Q. You have been, since that time, president of the Northern Pacific?

A. Yes sir.

Q. Isn't it a fact that the same interests own both the Northern Pacific and the Burlington?

A. I would not put it that way. The Northern Pacific owns half the stock of the Burlington.

Q. And how much of the stock of the Great Northern does it own?

A. None.

Q. Doesn't the Great Northern own the controlling interest, in the Northern Pacific, in turn?

A. It does not.

Q. Are not the same individuals in control of the three properties?

A. There are a good many common stock-holders. A great many gentlemen own stock in the Northern Pacific and stock in
684 the Great Northern. Practically all of the stock of the Burlington Railroad Company is owned by the Great Northern and the Northern Pacific.

Q. What part of the stock of the Burlington Railroad Company or Railway Company does the road of which you are president own?

A. We own, in round figures, very close to fifty per cent of the stock of the railroad company.

Q. And what of the stock of the railway company?

A. I don't think we own any.

Q. That is simply a nominal stock issue?

A. I can not tell you. I am not an officer of that company.

Q. Are you familiar with the fact that only ten thousand dollars of the stock is issued, and that to employés or clerks in the office of the General Manager?

A. I am not familiar with it.

Q. Does the interest that the Northern Pacific owns in the Burlington constitute the controlling interest?

A. It does not.

Q. Does the interest that the Great Northern and the Northern Pacific together own constitute the controlling interest?

A. It does.

Q. Consequently, the stock of the Burlington company is not now sold upon the market?

685 A. No sir.

Q. Have you examined this system of calculation which has been proclaimed in this case by Mr. Sturgis?

A. I have not.

Q. For apportioning the expenses between State and interstate freight?

A. I have never seen Mr. Sturgis' figures. I don't know what they are.

Q. What was your position with the Burlington when you were in its employ?

A. How far back do you want to know?

Q. Were you ever in the accounting department?

A. Yes.

Q. What was your position there?

A. I was auditor of what was known as the St. Louis, Keokuk and Northwestern, and Chicago, Burlington & Kansas City, most of the mileage of which was in the center part of the State of Missouri. I held that position from 1882 to 1887, I think it was.

Q. What were your other positions?

A. After that, I was General Freight & Passenger Agent of the same two companies, until 1892.

Q. Beginning at that time, did you go to the passenger department?

A. From 1887 to 1892 I had charge of the freight and passenger business of both those two companies.

686 Q. Two branch lines?

A. Call them Branch lines, if you like.

Q*xx*. They belonged to the Burlington company then, didn't they?

A. Yes sir. Then, I became General Freight Agent of the Hannibal and St. Joe, and Kansas City, St. Joseph and Council Bluffs Railroad, most of whose mileage was in the State of Missouri. I gave up at that time direct charge of the passenger business.

Q. Then, how long did you continue in that?

A. Until the first of January, 1896, when I became General Manager of the same four properties, and remained in that position until, I think it was, May, 1901, when I was elected Second Vice President of the C. B. & Q. and remained in that position until October 21, 1903, when I went to the Northern Pacific.

Q. Judge Spencer asked you if you were familiar with, or if your services had enabled you to express an opinion as to the comparative expense between doing local and through freight business?

A. Yes sir.

Q. You so understood the question?

A. Yes sir.

Q. What do you mean by "local" freight business, Mr. Elliott?

687 A. I should call local business business that was picked up at a place like Hannibal and peddled out from one station to another in the State of Missouri or moved on to a Branch line.

Q. Would you by that same term, and in your understanding of the question and the giving of the answer, also include such freight, for instance, as was taken from Des Moines, Iowa and sent down on a Branch line to Albany, Missouri?

A. Yes sir, I should call that local business.

Q. Or such freight as was taken from Indianola, Iowa and sent down to any point on either of those branches with which that connects. That would be local business according to your idea?

A. That would be my interpretation of it.

Q. And by "through" business you would mean business that was handled in wh-t are known as "through freight trains"?

A. Substantially that.

Q. That is, by "through business" you would refer to shipments that would originate, say at Kansas City and end at Hannibal?

A. It might be going to New York.

Judge SPENCER: I want to say——

Gen'l HADLEY: I wish to proceed without any suggestion from counsel.

The MASTER: One at a time, please.

688 Mr. SPENCER: I asked Mr. Elliott a question about local business, and we had in this hearing adopted the words "local business" to mean business originating and ending in Missouri.

Gen'l HADLEY: That is not proper, to——

Mr. SPENCER: It is perfectly fair to say, that when we say "local freight," that I used it in that sense, and I want the witness to understand it in that sense. I have no objection to the opinion of the

witness on what local business is, but I want to put myself right on the record.

The MASTER: It is possible that the witness was not cognizant of the meaning of the term "local freight" as existing between counsel in this case. And it is perfectly proper for the counsel for the State to understand what understanding the witness has.

Mr. HAGERMAN: It was understood at the beginning of this hearing that we used the word "local"——

Mr. HADLEY: I suggested that we use the word "State" to mean it.

The MASTER: Whatever the understanding is it would not control a witness who knew nothing about it. It is perfectly proper and right that the understanding of the witness, as to the term, should appear. I overrule the objection.

Mr. HADLEY:

689 Q. You would call, business originating in Kansas City and ending at Hannibal or St. Louis, carried on a through freight train, "through freight business"?

A. Yes sir.

Q. And your testimony was given upon a comparison of the expenses of handling the two classes of business that you have indicated you meant, in answer to my question?

A. Yes sir.

Q. It is true, isn't it, Mr. Elliott, in your experience as an official of the Burlington Railroad, that the Burlington does haul what you would call "State freight" upon through freight trains, just the same as it hauls interstate freight on through freight trains?

A. Some.

Q. Do you know the percentage?

A. I do not.

Q. Would that be a matter that would be the subject of definite calculation and determination from an examination of the books of the Burlington Company?

A. I think it could be gotten at with great labor. I don't know whether it could be obtained from their records or not. It could for a short period of time.

Q. What you call local, or way freight trains, handle State and interstate business, don't they?

690 A. On a Branch Line, or a line which runs across the State line, they do. In the case you mentioned from Indianola to Albany, for instance.

Q. What are thee freight divisions in Missouri, east and west?

A. I don't understand your question.

Q. There is a freight division extending from Hannibal to Brookfield, isn't there?

A. You mean, what we call an engine run?

Q. Yes.

A. Yes sir, there used to be. I don't know what it is now.

Q. And from Brookfield to Cameron?

A. From Brookfield to St. Joe.

Q. And on Kansas City freight the Division is Cameron, isn't it?

A. I could not answer that, how that is now.

Q. Anyway, it is true, isn't it, that you have what you call "engine runs" or freight Divisions, as near as you can, about one hundred miles apart?

A. Yes sir.

Q. The through freight trains make fewer stops between the ends of freight divisions than local freight trains?

A. Yes sir.

Q. That is what you mean by through freight trains as distinguished from local trains, isn't it, Mr. Elliott?

A. That is a fairly good definition.

691 Q. I am referring now particularly to the method of operation?

A. Yes sir, a through run is from terminal to terminal.

Q. If there should be a shipment of freight from Chicago to some point upon the Burlington line between Brookfield and St. Joe, how would that shipment be carried and handled, in the ordinary course of business?

A. I think you will have to ask an officer of the C. B. & Q. how they do that.

Q. During the time you were with it, what would be the usual method of handling shipments of that nature?

A. It would probably be put on a through freight train, as far as Brookfield, anyway, and would probably *would* go on a way freight train from there.

Q. In other words, if I understand it correctly, and if not please correct me, an interstate shipment which is destined to some sta-ion between terminals of a freight division, is left at the end of the division next away from the station to which it is destined, and then is handled from that point on by a local freight train?

A. Not always.

Q. That is the usual course?

A. Sometimes it is done that way.

Q. Or the through freight may stop there itself?

692 A. Yes sir.

Q. But the method of handling freight on the Burlington, during the time you were connected with it, was to have as few stops of the through freight train as possible, and let the local freight train handle the freight between the division points?

A. As far as we could, yes.

Q. That is, economy in the conducting of transportation on a railroad?

A. Yes sir.

Q. That is regarded as economy?

A. Yes sir.

Q. The minimum expense is secured by operating a freight train between two freight terminals, isn't it, or over one division?

A. How is that?

Q. The minimum of expense in railroad operation is secured by the unbroken or uninterrupted operation of freight trains over one division?

A. Yes sir.

Q. That is, when you get beyond one division, the expense of operation does not increase in proportion to the increase in distance carried?

A. I don't think I understand that last question.

Q. That is, the expense of carrying through freight to two divisions is no greater proportionately than the expense of carrying through freight to one division?

693 A. It depends entirely on the character of the division.

Q. Take the situation in the State of Missouri, for instance—I think we understand each other, and it is probably my inaccuracy of expression of railroad terms—but the point I am getting at is, that the minimum of expense is secured by operating through freight uninterruptedly on one division?

A. Yes sir, to keep the cars going and not stop.

Q. You agree with the testimony of Mr. Fink, whom you know——

A. I know who Mr. Fink is but I don't know what testimony you refer to.

Q. His testimony given in the case of Smythe versus Ames, in which he says, "If you go over one division, and haul a full train load, that gives the cheapest rate per ton per mile. And the longer line is composed of a number of divisions. It does not reduce the cost per ton per mile, whether the freight goes over one or more divisions."

That conveys the idea of my question exactly. Do you agree with that statement of Mr. Fink's?

A. I do not think I would agree entirely with that, Mr. Attorney General.

Q. What modification, Mr. Elliott, would you make?

694 A. I think the cost is reduced somewhat if the freight is going to make a continuous movement over ten divisions of one hundred miles each, against moving over just two divisions of a hundred miles.

Q. Do you think just two divisions would reduce the expense per ton per mile over one division?

A. It would tend to.

Q. There would not be but a slight difference?

A. It would be hard to say what it was. If you had a car going from St. Louis to Denver, through the State of Missouri, it would go to Hannibal, Brookfield and St. Joe and then on West; and then you would have the minimum amount of terminal delay and switching on that car divided up among ten engine runs, compared with what you would have if the car went over just two engine runs.

Q. You were familiar with the difference in operation between freight trains and passenger trains in the service of the Burlington, weren't you?

A. Yes sir.

Q. What is regarded as the better revenue producing department?

A. Freight trains.

Q. Passenger trains run on schedule if you have one passenger or the capacity of the train, don't they?

A. They try to run them on schedule.

Q. I mean, they try to start on schedule. The train is not abandoned because it is not full?

695 A. No sir.

Q. If you had not any freight at all, does a freight train run, that might appear on the freight schedule as starting at a certain time and arriving at a certain time.

A. As a general rule, it would not run if it had no business to do.

Q. In other words, freight trains are operated to carry freight that may be offered to the company to be carried, and if there is no freight to be carried the freight trains do not run.

A. That is right.

Q. Coming back to the proposition from which I adverted for a moment, are through freight trains, as a usual thing, in the ordinary method of operation of the Burlington road, operated from one end of a freight division to another, without stopping?

A. No sir, they have to stop to coal and water and to meet other trains. They have occasionally to stop and pick up some car. As a rule they do not do much stopping between terminals if they are through, heavily laden, freight trains.

Q. Suppose what you call "through freight," starting from Hannibal and going to Brookfield, the end of the next division, should have a light load, how about the stopping of that freight train compared with one loaded to its full capacity for Brookfield and

696 points beyond?

A. I presume if there was any more business to go, a car to go from Macon to Denver, say, if they had not a full train load they would stop and pick the Macon car and take it along.

Q. And if they did that local business on that trip, that might result in the abandonment of the local freight train between Hannibal and Brookfield, if there was no other business for the local freight train to handle?

A. If there was no other local business for the local train to handle, but as a matter of fact, I do not think it would result that way.

Q. You don't mean to say but that such occasions have arisen and do arise, in the operation of the road?

A. They do, but I would not say they did upon that particular railroad.

Q. Who has charge of the making up and sending out of freight trains and the cancellation of freight trains?

A. The superintendent of the Division has general charge. That work is done through the chief dispatcher, the Train Masters and the Yard Masters.

Q. Then, you have a Superintendent of Division at Hannibal and at Brookfield, and if there is a Division at Cameron, you have a Division Superintendent at Cameron?

697 A. They don't happen to have one at Cameron. They have a Superintendent to start at Divisional Head-Quarters,

and they endeavor to get the best use they can out of the company's engines.

Q. The Burlington has always been regarded and has the reputation among railroads, as being a well operated road?

A. Yes sir, I believe so.

Q. It enjoyed that reputation while you were with it?

A. I hope so.

Q. Isn't it a fact that what helped that reputation and produced that result, was the method of carrying freight in trains loaded to their capacity?

A. That was one of the elements.

Q. Wasn't that something of a specialty, that you devoted yourself to when you were with the Burlington and has been since?

A. Yes.

Q. A freight train running from Hannibal to Brookfield is made up where?

A. It is made up for that particular run at Hannibal.

Q. And under whose supervision?

A. Probably, under the supervision of the yard Master at Hannibal.

Q. Then, if there was a through freight train scheduled to
698 leave Hannibal at six o'clock in the morning for Brookfield, and a local freight train scheduled to leave an hour later, and a through freight train was not loaded to its capacity, and there was freight to be picked up between Hannibal and Brookfield, it might result in the Yard Master not sending out the local train but directing the through freight to do the local business, mightn't it?

A. I do not think it would, on that particular part of the railroad.

Q. Take it upon the division between Brookfield and Cameron?

A. Or there, either.

Q. Where would such a state of affairs exist?

A. On some line with a very light business.

Q. But I was assuming that the tonnage to be hauled from Hannibal to Brookfield was not the capacity of the through freight train?

A. The point that I want to make is, that that is country which has a good many good towns, and there is always enough to pick up on the way freight in order to give service to the Community, to always have the way freight train; and I don't think there would be one day in the three hundred and twelve days in the year where a local freight train could be abandoned in that kind of territory. It might be abandoned on some light Branch Line where you might find business only three times a week or twice a week.

699 Q. There is a freight division between Carrollton and Milan?

A. I don't know. It used to run from Carrollton to Moulton.

Q. That would illustrate the same point. That is what you call a Branch Line?

A. Yes.

Q. Such a condition might frequently arise there and the course of operation that I suggest frequently be followed?

A. That might happen. Freight to go from Carrollton to Moul-

ton, only one or two cars, they might carry that and pick up the local on the way down.

Q. And the freight they would pick up between divisions might be freight bound to a point in Missouri, or freight bound to a point in Iowa?

A. It might.

Q. There is no difference in service, by reason of the destination for which the freight may be intended?

A. No sir, not on that kind of a line.

Q. And even taking the other situation, the Hannibal to Brookfield division, Mr. Elliott, if there was a car load of freight at Macon which was bound for Kansas City of St. Joe, in the usual course of operation, what you call the through freight train would stop to pick up that car, wouldn't it?

A. I doubt it.

700 Q. How would it be handled?

A. That, probably, would have to be taken on some local train to Brookfield, and then consolidated with other cars and put into the through train there.

Q. Suppose that instead of the freight being bound for Kansas City or St. Joe, it was bound for Atchison, would the same method be followed?

A. Yes sir, I think so.

Q. There would be no distinction because it was bound across the line, to Iowa or Nebraska, than if it were bound for Kansas City or St. Joe?

A. The Superintendent at Brookfield would endeavor to move all his business as promptly as he could.

Q. And that without reference to where it was destined?

A. Yes sir.

Q. The converse of what I have been endeavoring to present by my questions is true, that both in the distribution and picking up of freight the usual method is to handle freight to a Division point on a through freight train, and handle it between divisions on local freight trains.

A. On a line with heavy business, yes.

Q. If there was a shipment, for instance at Chillicothe—or that is a large place, let us take some small town, Breckenridge, for

701 instance, between Brookfield and Cameron—that wanted to go to Chicago; would that be handled by the local freight train from Breckenridge to Brookfield, and then taken up by the through freight train at Brookfield and carried on to Hannibal, and from there to Chicago?

A. It might. As I say, it would all depend on how the superintendent could best adjust his power and move the maximum amount of business.

Q. In other words, the picking up and handling of freight depends upon the judgment of the division superintendents, or the Yard Masters, based upon the getting of the most prompt service and the moving of the fullest train loads?

Q. In a general way, yes.

Q. Those are the two elements that enter into the making up of trains, and the stopping of trains, and the distribution of freight between division points?

A. They do not want to stop a heavy, through train, to pick up freight, if they have their way freight that can pick it up.

Q. You are familiar, also, I presume, Mr. Elliott, with the method in which less than car-load shipments are handled?

A. Yes sir.

Q. In speaking of local as compared with through freight, you do not mean to characterize through freight as synonymous
702 with less than car load business did you?

A. Not necessarily. Part of it is less than car load.

Q. Is any of the through business less than car load?

A. Yes sir.

Q. Interstate freight is in less than carload lots?

A. Yes sir.

Q. And State freight is in less than car load lots?

A. Yes sir.

Q. Interstate freight in less than car load lots received by your line from East of the Mississippi River, from another line is handled in what way?

A. I don't think I understand the question.

Q. The point I want to see if I am right on is, if you would receive less than car load shipments, say, from the Wabash at Hannibal—assuming the Wabash goes there—tnen, there would be a transfer from the Wabash car to a Burlington car?

A. Probably there would be; there might be. A car might run through, but probably there would be a transfer.

Q. But you take a less than car load shipment which would go from Hannibal to a point between Brookfield and Cameron, and that would not be transferred from another car at Brookfield? It would go right straight through to the point between Cameron and Brookfield?

703 A. Probably not. And that is one of the elements of the expense of local business. You put a few thousand pounds in a car and send it through to this local station, in order to give service, and you do not get the full benefit of the capacity of your car.

Q. But assume that less than a car of freight originated on the Wabash Road, at some point in Illinois, in the usual course of operation that would be transferred?

A. At some Junction.

Q. Say, at Hannibal?

A. Yes.

Q. And then would be carried in that car to a point between the freight division terminals, by a local train?

A. Yes sir.

Q. But if it originated in Missouri, it would be carried in the same car in which it was originally placed?

A. Yes sir.

Q. So, of course, while less than car load business adds to the

expense of operating local trains, because it does not make a train up to the capacity of the engine, yet in comparison with local freight that is received from another company, and freight in less than car load lots that originates upon your line, there is more
704 expense in handling that which comes from aonther company than in handling that which originates on the Burlington, isn't there?

A. Theoretically, your theory is correct; but as a matter of practice, the distribution of less than car load business is done in territories generally nearest to the important jobbing centers. Less than car load lots that would be received at Hannibal would be bound for a point on the Burlington, because the stuff would be bought in Hannibal or in St. Louis.

Q. Did you ever have occasion to investigate the percentage of less than car load business of the Burlington?

A. I never did.

Q. You don't know whether it would amount to one per cent of the business—or have you an opinion on that point that would be of value or that you would care to express?

A. No, I don't think I have. I don't remember those figures.

Q. What you call the Branch Lines of the Burlington in North Missouri, are mainly North and South lines, aren't they?

A. Yes sir, I should say they were on the whole Northerly and Southerly.

705 Q. I don't mean straight North and South, but most of those lines cross the Iowa line into Iowa?

A. A great many of them do.

Q. And by far the greater volume of the traffic handled upon those branch lines is interstate traffic, isn't it?

A. I should say not.

Q. Well, are not the features that determine the movement of freight, the commercial centers—the distribution, I mean?

A. Yes, in a general way.

Q. And the commercial centers in Missouri are located upon the borders of the State, aren't they?

A. Yes, that is right.

Q. Particularly upon the East and West borders?

A. Yes.

Q. Now, there isn't much interchange of freight between local points in Missouri, outside of the commercial centers, upon the Burlington road, is there?

A. I don't think I understand the question.

Q. There would not be much interchange of freight between a place like Brookfield and Cameron, or Brookfield and Chillicothe?

A. I cannot say how much there is, but of course there is an interchange of commodities all the time between all stations.

Q. I mean, the great volume of freight is the transporta-
706 tion of freight from commercial center to commercial center, or the distribution of freight from commercial centers and carrying it to commercial centers?

A. Yes, I should say the main volume was.

Q. There is no distinction in the service between the handling of less than car load shipment, where it comes from Iowa or Illinois into Missouri, as compared with its originating in Missouri and bound to a point in Missouri, is there, except the element of unloading, which I have mentioned.

A. If a shipment, for example, came from Illinois to St. Louis, and then had to be distributed to Missouri points, they would be consolidated into a car in St. Louis and sent out from there. If they came to Hannibal the same thing would happen? But the point I was trying to make is this: That the so-called local business cannot load your car as heavily from Hannibal out to Saxton or Breckenridge, with merchandise, as you could from the large centers, going long distances, to through points.

Q. I understood that, and I do not disagree to that proposition. But the point I am making is, that less than car load shipments receive the same service whether they originate in Iowa for a point in Missouri, or originate in Illinois for a point in Missouri, as if the originated in Missouri and were destined for a point in Missouri?

A. Practically so.

707 Q. In other words, the Burlington makes no difference in service as to whether a shipment is State or inter-state?

A. It tries to give good service to all of them.

Q. Your answer, as I took it down exactly—was that the additional expense for handling local, as compared with through business was from three to six times as much?

A. Yes sir.

Q. That you have already explained was a comparison of local freight business with through freight business?

A. Yes sir.

Q. Do you mean by the expense of handling a ton of freight per mile in your local freight business was three to six times as much as the expense of handling a ton of freight per mile in the through freight business?

A. In a general way, yes.

Q. That is, if I can give a concrete example, which will perhaps make it clearer to my mind, although perhaps not to yours, if it cost the company, or the expense to the company in handling a twenty thousand pound car fifty miles by a local freight train was fifteen dollars, and the expense of handling a car of the same size, the same distance in Missouri as a through shipment, was five dollars,

708 then that would be a concrete example of what you indicate as the three-fold or six-fold ratio of expenses?

A. That would be in the same proportion.

Q. You are not undertaking to make any comparison between expense in proportion to revenue?

A. No.

Q. It is true, isn't it, Mr. Elliott, that the rates upon local freight are heavier than the rates upon through freight?

A. Yes, in a general way that is true.

Q. That is, the company gets a larger revenue on local than on through freight?

A. Yes sir.

Q. And if upon the shipment I have referred to, where the expense to the company was fifteen dollars for carrying the car of twenty thousand pounds fifty miles, if you get twenty-one dollars for that, and got seven dollars for carrying the car of through freight, then, your percentages of profit would be the same upon the local shipment as it would be upon the through shipment?

A. Please state that again?

Q. The expense to the company of handling a car of local freight would be fifteen dollars, and you would charge and receive for handling that car that distance twenty-one dollars. The expense
709 of handling the car fifty miles in Missouri, as part of an inter-state shipment, would be five dollars; and the charge apportioned to that part of the shipment would be seven dollars. Then of course, the ratio of profit would be the same upon each shipment, wouldn't it?

A. Yes, that is correct.

Q. But the actual profit of the company would be three times as great upon the local shipment as it would be upon the inter-state shipment?

A. Based upon those figures, yes.

Q. In making this calculation and giving us your ideas of the increased expense, you have simply spoken from the standpoint of a railroad man, familiar with the operating department, haven't you, Mr. Elliott?

A. I have spoken from the standpoint of a railroad man, generally.

Q. I don't mean you have no knowledge of other factors, because I know you have. But the point I am getting at is, that you are simply taking into consideration the increased expense of operation, without reference to the revenue that may be produced by the handling of the local freight as compared with through?

A. No sir, I wouldn't say that. That is the reason I said from three to six. If we take into consideration the higher local rates, I should say three times. If we throw out the question of rates
710 entirely, I should say six times. Assuming that the local rate is the same as the through rate, I should be inclined to use the multiple six, or even higher.

Q. It was on the idea that the local rate was at least twice as high as the through rate, that you gave the minimum of three?

A. I did not figure any particular rate, but I knew, of course, that the local rate was higher. I did take that very idea into consideration in using the statement three to six. If you are going to figure it on the exact basis of local rates being what they are, if they are considerably higher, then, your multiple would be three. If you take the local rates the same as the through rates, your multiple would have to be higher.

Q. In other words, the percentage of the revenue or earnings upon local freight to the earnings upon local and through freight, would not be the same percentage as the expenses of doing local freight business, unless it was assumed that the revenue derived by the company per ton per mile on the two classes of freight was the same?

A. The ratio would not be the same unless you assumed that.

Q. And it was upon the theory that the rates were the same upon the two classes of freight that you gave your idea as to the increased expense?

711 A. That would be, as I say, in a general way. If you are going to get exactly the same rate on your local tonnage as you do on the through my thought was that you could figure that it would cost you anyway six times more. It should be multiplied by six instead of three to get the devisor of the total expenses.

Q. Consequently a system of apportioning expenses to local as compared with through business, on the relation between the earnings upon local as compared with the earnings upon all freight business, must necessarily involve the consideration of whether there is a greater or less revenue to the company per ton per mile on the two classes of freight?

A. If you are going to figure on a revenue basis you take a lower multiple than if you have the tonnage multiple. If you take the tonnage basis you have a higher multiple to figure by.

Q. Don't you think the only multiple of expense of handling local freight as compared with through freight is to take a lower unit?

A. That would be one way of figuring it.

Q. To illustrate my point further, and see if I have fully grasped the idea—the earnings upon through freight in a certain territory might be $1,000,000 as compared with $4,000,000 on through freight, or a ratio of twenty and eighty per cent of the total

712 freight business; while the ratio of the tonnage between the two classes of freight might be entirely different than twenty and eighty.

A. They might be very different.

Q. And, as a general proposition, from your familiarity with the rates charged for local and through business, there would be a smaller number of tons per mile hauled to produce the $1,000,000 of revenue on local business than there would be, proportionately, to produce the $4,000,000 revenue on through business?

A. That is correct.

Q. But assuming, Mr. Elliott, in the carrying out of the example I have given you, that within a certain territory the earnings upon local and through freight were $5,000,000, and that the earnings upon local freight were $1,000,000, the earnings upon through freight being $4,000,000; and the expenses for the doing of the local and through freight business was $4,000,000; and assuming, further, that the rate per ton per mile received by the company on the local freight business was three times as much as the rate per ton per mile received on the through business; and assuming further that the expenses of doing the local business were three times as great per ton per mile as the expenses of doing the through business; then, you would get the proper proportion of the $4,000,000 freight

713 expenses to earnings of the local business by taking the ratio existing between the earnings and applying that ratio to the division of the expenses?

A. As I understand your question, Mr. Hadley, what you mean

is, if you have $1,000,000 local freight earnings, $4,000,000 of through freight earnings, and assume that the local freight rate per ton mile is three times as high as the through freight rate per ton mile, and assume that the cost is three times as high, then you would apportion the total cost in the ratio of 1 to 4?

Q. Yes.

A. Now, doing it that way, of course that would seem to be correct. But I think you have got to go further than that. You have got to take your $1,000,000 and your $4,000,000; you have $1,000,000 worth of freight earnings, and let assume that you get 3 cents a ton a mile, putting it at that arbitrary figure for the sake of a simple calculation; that would mean you would have to handle 33,000,000 tons of local freight one mile to produce your $1,000,000, three times 33,000,000 would be 99,000,000. Now, to produce $4,000,000 of earnings from your through freight at one cent per ton per mile, you would have to handle 400,000,000 tons of freight one mile at one cent per ton per mile, to give $4,000,000. The total of those two is 433,000,000 tons, one mile.

Now, if you are going to use the ton mile basis as a unit, in my judgment you have got to multiply your local by at least six——

714 Q. As I understand you, Mr. Elliott,——

The MASTER: Do not interrupt the witness.

A. (continued). That is, you would multiply your 133,000,000 by 6 to equalize it with the through rate, and get the proper relation. So you would have 198,000,000 as your factor in figuring the proportion of the total expense to apply to the local; add your 400,000,000, which is your factor of the total expense to apply to the through, which makes 598,000,000. Now, you apportion to your local 198/598 and to your through 400/598; or, instead of 1/21 that you have worked it out, you would have to apportion about ⅓—yes, just ⅓——

Q. Well, Mr. Elliott, have not you refused to accept (I do not mean offensively so) the calculation I have given, that it would cost three times as much per ton per mile to handle local as through freight? You say you should take six times to make the ratio?

A. I do, if you are going to use the ton mile theory. When you are using the earnings themselves, I use the multiple three because I have taken into consideration the higher rate. If you are going to throw out all question of the revenue and come down simply to the physical work done, if it were all done free if you like, I should say you would have to use a much higher multiple than three and on some branches it might be even ten.

Q. That is your idea, I understand. But I say, assuming for the purpose of illustrating a theory I have in reference to this
715 matter, that the rate per ton per mile received by the company on its local business was three times as great as the rate per ton per mile received on its through business, and the expense of handling a ton per mile upon the local business was only three times as great as the expense of handling a ton per mile upon the through freight business?

A. I think I answered the question upon the basis of your assumption. That is simply an arithmetical question; that is all it amounts to.

Q. But assuming that the average cost, leaving out percentages, or leaving out the increase, and assuming that the average cost of handling local freight is proportionately three times greater per ton per mile than the cost of handling through freight; and assuming that the revenue of the company from handling local freight is three times as great per ton per mile as the revenue from handling interstate freight, then isn't it true that the expense of handling state freight is correctly determined by taking that percentage of the total freight expenses that the earnings upon State freight bear to the entire freight earnings?

A. I answered that. If you start on that basis it is simply an arithmetical question, that comes out just that way. But I don't agree to that.

Q. It comes out that way as an arithmetical proposition from the figures — have stated?

A. I guess they do it that way down at Hannibal, and
716 Judge Spencer used to do it that way down at Canton.

Q. I am a poor mathematician, but I want to see if my idea is right upon that point; if the local freight earnings in a certain territory for a certain period were 20 per cent of the total and the same revenue per ton per mile was received for the doing of a local business as was received for the doing of the through business, and the same expense was incurred by the company for the handling of a ton per mile upon local freight business as for handling it upon through freight business, then the relation between the local and the through business, on revenue, is the relation of expenses?

A. That is right, if you assume all that.

Q. And if it increases the rate per ton per mile on the local as compared with the through business, then you necessarily affect the division of the expenses?

A. That is right.

Q. Then we completely understand each other.

A. Let us see if we do. You start with 20 as your proportion. I say that, taking into consideration generally the fact that we know that the local rates are higher, therefore your 20 is arrived at by a lesser amount of tons one mile. I say that in that case you ought to, in dividing 100, multiply your 20 by 3; that would give you 60 for your local factor, and 80 for your through; that makes 140. Now, your local would have assessed against it 6/14 of the expense, on
your theory, and 8/14 on the through. That is, taking
717 into consideration a higher revenue.

I go further, and say that to get your 20 — have got to carry your 1,000,000 mile at 2 cents. That would give you 20. Now, to get your 80, you would have to have 8,000,000 mile at 1 cent; that would give you 80. That gives you a total of 900,000,000 one mile to produce your 100 per cent of revenue. I say you have to multiply 100 by 6.

Q. You say there is six times greater expense, if the revenue is twice as great?

A. No sir, leaving out the rate per ton mile, and figure it simply on the physical effort made to handle the business, 1,000,000 tons one mile, moved, in order to get your $2,000,000. You have to multiply that by say 6; that gives you 600,000,000 as against 800,000,000, and you get 1,400,000,000 tons one mile, and you apportion your local 6/14 and your through 8/14 and get back to the 3/7 and 4/7.

Q. So the comparison, then of 3 to 6 is, the 3 taking into consideration the increased revenue, and the 6 eliminating the revenue?

A. Yes, if we did it all for nothing. I say, if we did it all for nothing, in trying to divide expenses between local and through, you would have to take it that your total physical effort of doing the local would be very much greater per unit than for doing the through. What it would be I don't know, and nobody can know exactly.

718 Q. In view of the fact that you do, as a railroad man, know that there was an increased revenue from local as compared to through business, you put your margin at 3 to 7 to provide for the increase in revenue per ton per mile on local as compared with through business?

A. Yes.

Q. In the apportionment of revenue received by the company upon an interstate shipment, what basis of apportionment would you adopt?

A. I, individually?

Q. Yes, do you think it would be fair to adopt in assigning to a state its proper amount of revenue?

A. There would be a lot of conditions come in on that. The volume of the business, the character of the road, the cost of fuel in one place, as compared with another, and many other things.

Q. Do you think it should be divided upon a mileage basis, or a pro-rate by-rate basis?

A. In some cases I should say on a mileage basis, and in others on the pro-rate by-rate basis.

Q. You are familiar with the physical conditions existing in Iowa, Illinois and Missouri?

A. Moderately so.

Q. As between Illinois and Missouri, what basis of division of interstate earnings do you think would be proper?

A. Well, I should think that between Illinois and Missouri a pro-rate by-rate would be fairer than the mileage basis.

718½ Q. And as between Iowa and Missouri?

A. I should say as between Iowa and Missouri the mileage basis would be fair.

Q. Why?

A. Because the physical conditions are very similar between Iowa and Missouri; and the labor conditions and the fuel conditions.

Q. Isn't there a good deal of similarity between North Missouri

and southern Iowa, which is served by the north and south branches of the Burlington road?

A. Yes sir, I have just said that I would use a mileage basis in Iowa and Missouri, because they are similar.

Q. How about Illinois and Missouri?

A. I think the conditions in Illinois are somewhat different.

Q. In charging an interstate rate, does the state rate enter into the fixing of the interstate rate?

A. I should say it did. All rates have a bearing, one upon the other.

Q. That is, an interstate rate is not made greater tha- the sum of the local?

A. No sir.

Q. If that were so, they would re-bill?

A. Yes sir.

Q. So, if it is true that the rate in Missouri is from 24 to 35 per cent higher upon the same class of commodities, the distances being assumed to be the same, then does not the existence of the
719 higher rate in Missouri enable the company to charge a higher interstate rate than could be charged if the rate in Missouri were as low as it is in Iowa or Illinois?

A. It might. I don't know whether it does or not. It would be a question of taking the details.

Q. If you had a fifty cent rate in Illinois and Missou- for the same distance, with the same tonnage, and the same number of hundred pounds, the interstate rate, of course would not be greater than the sum of those two local rates?

A. No sir.

Q. But if the rate in Missouri was 70 cents for the same distance that the rate in Illinois was 50 cents upon the same commodity for the same distance, you could, of course, charge more than a dollar and still be less than the sum of the locals?

A. Yes sir.

Q. Then the increased revenue to the company, in that instance upon interstate business, would be higher than on business in Illinois?

A. That is correct.

Q. Then in determining the amount of money the company would receive in Missouri on its business, ought not Missouri get the benefit of that higher rate which contributes to the higher revenue to the company?

A. I think it does.

Q. It does when you divide the interstate rate between the two states on a pro-rate by-rate basis?

720 A. I think it gets it now.

Q. Then Missouri business would get the benefit of the higher rate made possible by the higher rate existing in the state?

A. Yes sir.

Q. Mr. Elliott, there is a general division, isn't there, of expenses in the doing of freight business, between what you would call maintenance of plant, and conducting transportation?

A. There is a general division of all our expenses, not only freight, but passenger, between maintenance of plant and what you call conducting transportation.

Q. Does this increased expense of doing local as compared with through business exist in one or both of those divisions? Is the question clear?

Mr. HAGERMAN: You mean, conducting transportation and maintenance of plant.

Mr. HADLEY:

Q. Maintenance of plant is the right term?

A. Maintenance of equipment and structures.

Q. But there is a general classification of the two classes, isn't there?

A. There are three or four, really.

Mr. HAGERMAN: There are six in this case.

Mr. HADLEY: It comes down, Mr. Hagerman, to a division between the two.

Mr. HAGERMAN: I am only mentioning it now, because in
721 our statement maintenance and conducting transportation have been subdivided so that we have now six classes, and it leads to confusion to say there are only two classes.

Mr. HADLEY: I concede that the two classes include all six.

A. You mean there are two great big divisions, one to maintain your property and the other to carry on your business.

Q. Yes.

A. Of course we subdivide those into others. Yes, there are two great big divisions, but we subdivide them for our own convenience, in various ways.

Q. In apportioning the expense for the maintenance of plant, using that term as meaning maintenance of property, how should the expense be divided, in your opinion, between local and through freight business?

A. I never gave any thought to how to make that division.

Q. Are you familiar with the work of Beale and Wyman on Railroad Rate Regulation?

A. I am not.

Q. Do you know who those gentlemen are?

A. I do not.

Q. The statement is made in that work that the cost of maintaining a plant is an expense that should be divided between local and through freight business, as I understand it, in proportion to their volume: Do you think that is a fair method of division?

722 A. I should think that was fair as to certain classes of maintenance, but there are a good many parts of the maintenance of the railroads that have to be taken care of for local business that are practically of no*t* benefit for the through business. A small station building, maintained entirely for the benefit of local business, is of no use to the through business whatever.

Q. Let me ask you about that, Mr. Elliott. Here is a station on

the Burlington road, between Brookfield and Hannibal, called Cambria, which I assume is a small town. You probably know of it?

A. Yes.

Q. Wouldn't there be, during the course of the year, freight which would originate at New Cambria, and be bound for Chicago, a stock shipment, or a wheat shipment?

A. Yes.

Q. And you would characterize that as through business, wouldn't you?

A. Yes.

Q. And there would be freight received at New Cambria that would be shipped from Iowa, Illinois, or some distant point in Missouri?

A. There might be.

Q. That would be the usual course in commercial operation?

723 A. Yes, but if we had only through business passing over the road, we could get along at New Cambria without stock yards and side tracks, and what little freight there would be could be put on the ground and let a teamster come and carry it away.

Q. You wouldn't treat a town that way, would you?

A. If they don't have the local business, they don't have to have the local structures.

Q. In order to take out the stock they have to have the stock yards and side tracks?

A. Yes, I mentioned that.

Q. And you ought to have, in order to accommodate the traffic in the way it should be accommodated, an agent there to make arrangements for getting the cars set in?

A. Yes.

Q. An agent for making out the bill of lading?

A. That could be handled very easily by picking up the stock and taking it to some larger place and getting the bill of lading there. The point I am making is, that every railroad company has to maintain a great many of its so-called local stations, and like facilities, for the very reason which you have given, that they don't want to treat the passengers badly. Passengers want to get on the train and ride ten miles, and freight that is moved only 50 miles; and those we do not need to handle the through business. It would not be fair to divide that class of business, on the basis of volume of business. I cannot say what percentage of the maintenance of a local station would have to go to local business, but it would be a great deal more than the tonnage percentage.

724 Q. That local business which you referred to, which makes necessary the maintenance of a station at such a point as I have designated, might have originated in Iowa, or Illinois, or Nebraska?

A. It might, but as a matter of practice in the State of Missouri there is very little of that business. The business is shifted from Hannibal and St. Joe. The jobbing house in Chillicothe ships out, and there is but one terminal.

Q. Don't those stations ship the other way too?

A. Yes.

Q. Take Kansas City and St. Joe, which are in Missouri, they ship to the west, don't they?

A. Yes.

Q. And St. Louis ships to the east and the west. But the general trend of commercial shipments is west, isn't it?

A. The point I want to make is, how they—you have brought up several times movement of local business from points in Illinois or Iowa, to local points in Missouri. In my judgment there is an insignificant amount of that business. Local business in Missouri is very largely local to the State. I omitted Keokuk, right outside the State, which has quite a large amount of business with Missouri But Des Moines and Ottumwa would do very little business in Missouri. Local business in Missouri is business which originates and terminates at points within the State.

725 Q. But there would be just as much interchange of business between points in North Missouri and Iowa as there would be of local business between local points in Missouri outside commercial centers?

A. I think not.

Q. Haven't you a greater mileage running north and south crossing the Iowa line than you have crossing east and west?

A. I think other things come into play there than the mileage question. The past history of the State of Missouri and the past history of the State of Iowa, are such that there is no such interchange between the State lines, as there is between the people themselves. There is local prejudice, a Missouri man likes to trade in Missouri, and an Iowa man likes to trade in Iowa.

Q. Do you think that State pride or local prejudice would cause a man to buy in a higher market as compared with a cheaper market?

A. No sir, but I think a Missouri man is just as smart as an Iowa man, and the question equalizes itself. The man at Saxton will buy in St. Joseph rather than go up to Council Bluffs.

Q. The distance is shorter?

A. It is the same in places where there are common districts. The man at Canton, Missouri, I think would be inclined to buy in St. Louis and Hannibal, rather than at Keokuk, assuming that the prices are even.

Q. I am assuming that the distance is less.

726 A. I say, the prices are even. I say, he gets his goods laid down at his store at the same prices.

Q. That would depend upon the physical conditions existing in each place. The price at which the commodity is bought and sold depends to a very large extent on freight rates, doesn't it?

A. That is one important element. There are quite a number of others, and you have been investigating some of them lately yourself?

Q. I have been endeavoring to.

The general proposition in trade is that men who have things to

sell, sell in the highest market, and the men who buy things buy in the cheapest market without artificial division of State lines?

A. Yes, I agree to that. But I say there are just as smart merchants in Missouri as in Iowa, and of course they meet that situation.

Q. Of course I agree with that statement.

Mr. Elliott, the amount of what would be known as interstate freight as compared with freight that originated and ended wholly in the State of Missouri, which was carried by local freight trains, as distinguished from through freight trains, in car load or less than carload lots, can be determined for any certain period by an examination of the way bills, can't it?

A. Yes sir. It would be quit a difficult computation, but it can be done.

727 Q. In determining the amount of the earnings upon State business, to separate that item out from the entire freight earnings, the calculations could be made at the same time as making the other apportionment?

A. I should think so.

Q. And with the labor of apportioning the earnings upon State freight business, it would be but little additional labor to determine whether it was carried upon local or through freight trains?

A. Well, I think you would have to begin and figure in the future to do that. You could not go through the past and arrive at that. You could not tell today by taking a group of waybills for the business that was handled for the month of September, how much of that business was handled on local freight, and how much was handled on through freight trains.

Q. Because, if I understand the reason correctly—and I will ask you that—because an interstate shipment may be handled on a local freight, and there would be nothing on the way-bill to show it was a shipment of through freight, or it might be handled on a way freight, and there would be nothing to show that it was an interstate shipment.

A. There is nothing to show it. The way-bill has nothing on it. I would not say it would be physically impossible to do it, but it would be extremely difficult to do it.

Q. Wouldn't the conductor's reports show it?

728 A. I don't believe the conductor's reports would show it in such a way as to make the calculation afterwards.. The conductor's reports how many cars he has in his train. It might be worked out that way. Yes, it might be worked out that way. I wouldn't want to be absolutely certain about that. I don't know just how those records interweave, how the conductors' reports and the waybills interweave.

Q. Mr. Elliott, isn't it a fact that all railroads, including the Burlington in Missouri, are constructed and built primarily for the purpose of handling local business from small stations?

A. I will answer that in this way. In the beginning that was the idea. Take that Hannibal and St. Joe, it was built to handle local

business, but also the movement of business to St. Louis and then across the river and then west by team.

Q. That was the first road constructed in the State?

A. Yes.

Q. But the point I have in my mind and am trying to express, is this: In the construction of a railroad it is the purpose to have it touch as many towns as possible?

A. Not always.

Q. It is not constructed without reference to the location of towns, is it?

A. No, but very much of the Burlington in Missouri, recently constructed, was for the purpose of expediting through business.

Q. But the original reason for the construction of a road, and the construction of the greater part of the Burlington, is for the
729 purpose of taking freight to and from local points?

A. I think it is fair to say that the early railroad building all through the country started out to serve the small local business, and as the country has grown they found that kind of road is inadequate and they have to modify that in a great many places, to take care of local and through business both. The Pennsylvania railroad is a very marked example of that, spending millions of dollars to get tracks upon which nothing but through business is to move, leaving the local business to be moved on other tracks.

Q. Isn't it a fact that the most profitable roads in the United States are the roads that do the most local business?

A. I shouldn't say that.

Q. Isn't the Pennsylvania regarded as one of the most prosperous roads in the country?

A. Yes.

Q. And hasn't it the largest local business?

A. I cannot say that. They have an enormous through business, and they have an enormous local business.

Q. You are not informed as to the percentages on that, you mean?

A. No.

Q. The construction of lines for the handling of local or through shipments has been a later development of the railroad business?

A. Yes.

Q. But the Burlington in Missouri originally consisting of
730 a number of different lines, primarily built for the purpose of handling local traffic?

A. I should say yes, in a general way, to that. The Burlington did not build its railroad itself in the State of Missouri. It acquired lines that had been built by other people; but for reasons, satisfactory to them, they thought it was better to sell out.

Q. And it is true, also, isn't it, Mr. Elliott, as a general proposition, that what would be called local business, business from small stations, is more absolutely controlled by the railroads, than its long or through or interstate shipments?

A. What do you mean by "controlled?"

Q. I mean there is less competition?

A. Yes, I should think that is true.

Q. That is, the principal competition that exists between railroads would be that between large commercial centers.

A. I wouldn't say that.

Q. Much greater competition exists between railroads in hauling from a commercial center to a commercial center than in hauling between the small stations?

A. Yes, I will agree to that. But there is competition at nearly all stations, on more or less all the commodities because the distances are not great across the country, and if one road so adjusted its business that the prices were very much less on farm products than on another, it would not get the business. Or, if the prices of
731 coal or lumber were much greater at one than the other station, there would be a tendency to team across the country. We have competition nearly everywhere.

Q. Is this idea or opinion that you have entertained and given here, as to the increased cost of doing local business as compared with the cost of doing through freight business, one you have recently arrived at, or one which you have entertained for a number of years?

A. There has been a good deal of discussion, you know, in some of the other states on this same question, and there has been more or less gossip and talk about it for the last six months, and all that has helped to crystal-ize my opinion that the cost of the local is much greater than the through business.

Q. Were you connected with the litigation of the Burlington company in the Nebraska rate case?

A. No.

Q. Are you familiar with the testimony given by the different experts in that case?

A. I remember looking it over a number of years ago, but I am not familiar with it.

Q. Do you know Mr. Dillworth?

A. No.

Q. Did you ever read his testimony given in that case?

A. Not to my knowledge; I don't remember it now.

Q. At the time you were general manager of the Burlington system, did you entertain the idea that the expense of doing
732 the local freight business was three to six time greater than the cost of doing the through freight business?

A. I don't know that I ever formulated them as to percentages. I entertained the idea that the cost of doing the local freight business is very much higher than the cost of doing the through business.

Q. Is it a fact that that opinion was entertained by your associates engaged in the operation of the road while you were with it?

A. I don't know that I ever talked with them about it. This was not such a burning question then as it is now.

Q. It became a burning question by reason of rate regulation, is that it?

A. I think so.

Q. What I am getting at, as you may have anticipated in your

mind, is, if you entertained the idea when you were with the Burlington that the expense of doing the local business was three to six times greater than the cost of doing the through freight business, did you have the rates fixed accordingly?

A. I can answer that question. When I first was made freight agent of the St. Louis, Keokuk and Northwestern Railroad, that very question came up in my mind. I found we were making rates all along the river, to meet alleged river competition. They were so low that it didn't seem to me we were getting a new dollar for an old one. I went to work at those rates, and at the
733 end of a few years I got them on a uniform basis, and I think they were something like 33⅓ or 40 per cent higher than they used to be, and yet we did just as much business, boats or no boats. That was all short haul local business.

Q. And how much higher were they than shipments that would go to St. Louis up to the last freight division upon that line in Missouri?

A. How is that?

Q. You said you had increased the rates from thirty to forty per cent; what relation then did they bear to what you would call the rates on through freight trains.

A. We raised the rates all along the line as far as Burlington, Iowa. We had that boat competition from St. Louis all the way to Burlington, and I think, before the C. B. & Q. bought the railroad, the people were either terrorized by the boats, or did not understand the situation. At any rate, they went into the hands of a receiver because they couldn't make money enough to keep out.

Q. I fear I did not make my point clear to you. It is this: You have stated that the cost of handling freight per ton per mile on local freight trains was three to six times greater than handling it on through freight trains?

A. Yes.

Q. I am asking you if, while you were General Manager of the Burlington in Missouri you had such a proportion existing between the rates?

734 A. No sir, we did not. But my policy was to try to get the local rates higher, because of that very general fact. I did not figure in my mind then what the ratio was. I am giving you the example of that river line, that that line failed and went into the hands of the sheriff, because apparently they were not paying attention to that very thing.

Q. And the rates on that line you increased on both local and through freight?

A. Yes, some of the through.

Q. The fact I want to get your opinion upon—and evidently I do not make myself clear, because I know if I did you would answer me frankly—if it costs three times as much to handle a ton per mile on the local freight trains as it does to handle a ton per mile upon the through freight trains, ought not, in justice to the company and to the shippers, the rates be three times as high upon

freight carried upon local freight trains, as that carried upon through freight trains, and did you have them so fixed?

A. No sir, we did not. We had to take the conditions as we found them.

Let me give you an example about this through and local business which will held to answer your question. I will state first, that some of the local business in Missouri and every other place, in my judgment the railroad would be a great deal better off
735 if it never had. It would be a good thing if it never had to put a box of it in its warehouse or han dle a box of it. But we have got to do it. Now, go back to the ton mile. Say one ton is hauled five hundred miles, and the rate is $5.00. That is a through shipment. It has to be loaded at the initial point, and unloaded at the terminal point. Fifty cents a ton terminal charge is not at all a high figure to take, in fact, it would not cover everything that enters into most of the terminal charges. It would, perhaps, cover the labor, and some of the repairs, and the yard expenses. But it probably would not cover the depreciation of your terminal property. However, I will assume 50 cents is the terminal charge here and at the other end. One ton hauled 100 miles at 1 cent, gives the $5.00; then deduct twice 50 cents or $1 terminal charges from that, and that gives you $4 to apply to carrying the business from the point of origin to the point of destination. Now, say you have 500 ton miles of local business, made up of 1 ton moved 50 miles, and ten shipments. Here are ten separate tons, each one of which is moved 50 miles, that gives you 500 ton miles. Say the rate is 2 cents a ton, twice as high as the other, so there would be double the gross revenue. In that case, the revenue would be $10. You have one ton moved 50 miles, with two terminal charges on that $1. Ten tons would be $10 for terminal charges, deducted from the $10 Line charges, and you have absolutely nothing left for carrying that business.

736 Q. Your point simply results in this: That if you carry one shipment 500 miles there is to be deducted for terminal charges, two terminals?

A. Yes.

Q. And in order to carry 50 miles 10 different shipments of course the terminals are multiplied by the number of shipments?

A. Yes, you absorb your entire gross revenue on this short haul local business in your terminal charges, and you have nothing left for moving your business over your railroad or for maintenance of plant.

Q. You have made yourself clear on that. Has the company made a proportionately large charge on that business?

A. It can't.

Q. Why not?

A. It hasn't the power.

Q. What do you mean?

A. Take it in the State of Iowa, the rates are made for us by law; and in Missouri, the rates are made by law.

Q. But take it prior to 1904, when there was no exercise of govern-

mental supervision and regulation of rates, take it before rate regulation began: Were the rates between local and through freight fixed by the company in reference to the expenses of the company?

737 A. Not as correctly as they should have been. The whole question of railroad management was growing, and it is growing today: It is going in that direction all the time. They are trying to get the local rates up everywhere. Where we used to haul a car-load at these low rates, we are endeavoring to get it up for this very reason. But we had this mass of railway business built up by years of practice, law or no law, and we cannot absolutely dislocate it.

Q. Does it result in the proposition that the rates, prior to the rate legislation by the States, were fixed without considering the expenses?

A. No. We were probably losing money on lots of business and never knew it. There was not the same close inspection of railroad management, by either the public or the management. Business is becoming so strongly specialized that we have to go after all these things. The packing house business was run in the same manner. Packing houses could not run to-day if they were run according to the methods of 25 years ago. And the steel business could not exist to-day if run according to the old methods.

Q. You regard it as a calamity?

A. What?

Q. That the Burlington has today any local business in the state of Missouri?

738 A. I do not say that. I say that on quite a lot of short haul business, we do not get a new dollar for an old one.

Q. And on the entire local business you lose money?

A. On everything we do we come out ahead.

Q. Ahead to a very considerable extent?

A. I hope so.

Q. That is the purpose of the management?

A. That is what the railroads were built for.

Q. Upon what you call local freight business, as distinguished from the through freight business, do you say that on that local business the railroads would be better off if it had not to do any of it?

A. On some of it I do.

Q. Isn't it true that upon some of what you would call the through business the railroad would be better off if it didn't have to do it?

A. It may be. You have to take it all together, the good and the bad, the thick and the thin.

Q. Don't you get more "thin" revenue upon long hauls than you do upon short hauls?

A. We get a lower rate per ton mile.

Q. If the Burlington company shipped or carried a car-load of stock from a point in Iowa 200 miles from St. Joe for a lower rate than they would carry a car-load of stock from a point 200 miles in Missouri, the fact that it originated in another state would not decrease or increase the expense of handling that car-load of stock?

A. No.

739 Q. But you do know that prior to the enactment of this law, and since, by reason of the injunction, the Burlington gets less on a shipment of stock from Iowa to St. Joe, that it would upon a shipment of stock the same distance from a point in Missouri to St. Joe.

A. I don't know. I know the Iowa stock rates are very, ver- low. It is a grave question whether there is any money in putting money into an investment in cars when the rates are so low.

The MASTER:

Q. Would you go so far as to say that, taking all of what you call local freight business in the State of Missouri, that the only means whereby the Burlington Railway Company can derive a profit is by considering that local business as extra business, having to maintain the plant, etc., for other business?

A. No, I would not go quite as far as that. Some of the local business must produce a profit; but I think this very short haul business, manufactured stuff from Hannibal to Canton, for example, I doubt very much if there is anything over to the railroad.

Q. You have no opinion as to how that question would enter into the whole problem, all the local freight of the state, as to whether it would produce a net profit, without considering it as extra business?

A. I have always thought that this example about the railroad business was more or less pertinent to the general discussion, showing how you would have to operate the business as a whole:

740 Take the packing house that makes a whole lot of things; it makes lard; it makes sausages; it makes spareribs. I don't believe that packing houses can tell you that it costs so much money to make a sausage, or so much money to make a pail of lard. Or that they fix their prices as well as they can on every item they sell. And if the sum total at the end of the year is more than the expenses, they have made something.

It is very difficult on a railroad to say, your local business costs so much, and your through business costs so much. You have to take the tihng as a whole. No doubt we do some business on which we do not make any money, and we do some business on which we make a great deal of money. I am not willing to say that the local business is unprofitable, or only profitable as extra business. And some through business may be that way. We may take a lot of empty cars to Billings, Montana, and rather than call them empty we might put something in them at what would be considered as a ridiculously low rate, but, taking it as a whole, it might help out.

The usual hour for recess having arrived, recess was here taken until 2:00 P. M.

741 After recess on Tuesday, October 23, th- following proceedings were had:

Mr. HADLEY:

Q. Mr. Elliott, what is your opinion as to the amount of empty hauls on long shipments, as compared with comparatively short shipments?

A. You mean the proportion of empties hauled?

Q. Yes.

A. I should say there would be more empties hauled on the short-haul business than on the long one.

Q. Take such business as a shipment of live-stock from a Missouri point to Chicago: can you utilize those cars in returning them to Missouri?

A. Not very well. We load them at times with iron, rail, sewer-pipe, cast iron pipe, and so on. But the same thing would apply on short haul shipment from Liberty to Kansas City. There would be less chance of loading an empty stock car back from Kansas City than from Chicago.

Q. But there would be less chance of loading it back from Liberty to Kansas City?

A. I don't know. Kansas City takes a lot of stock from western Missouri. A lot of empty stock cars have to go out of Kansas City to Liberty and Camden.

Q. Take a long train load shipment on the Northern Pacific and Great Northern to go to the coast. Isn't it one of the most difficult propositions you have to deal with to get produce to fill those cars coming back?

742 A. I think I understand your thought now, and I will express my opinion upon that, perhaps in my own language. There is a very large amount of east-bound business on the North Pacific Coast, in lumber. The whole country is looking to the North Pacific Coast for its supply of timber and shingles, and it has been very difficult to load those cars west-bound. But that, even, is decreasing. We have more loads going west, going to that country, than we had a year ago.

Q. Take your line which runs to Billings, Montana (I mean the Burlington when I say your line) what would be the character of shipments that would go east from the territory between Denver and Billings?

A. The business originating on that line would be grain and livestock, and the through business would be the Pacific Coast lumber, fruit fish, some oriental stuff that would come in, and perhaps other things.

Q. Would the matter of filling those cars to go back west be a difficulty?

A. Yes sir, there are more empty cars moving west via Billings than coming east. Everything going west just now is coal. But that would not obtain during the whole year.

Q. But on a shipment to be made over a distance of fifty or 100 miles, the empty car is not sent there until there is something to put into it?

743 A. No, not often, unless we have a surplus of cars; and then they may be stored at various places.

Q. They might be distributed along the line?

A. Yes.

Q. But, as a general proposition, that difficulty does not exist?

A. No.

Q. Coming back to this example you gave this morning of the terminal expenses and the revenue derived by the company upon a 500 mile shipment, as compared with 10 50 mile shipments, I want to see if I understood you correctly: You say you took the 500 mile shipment, and you allowed as the revenue or charged as the expense, for this shipment, how much?

A. I allowed as revenue a theoretical amount of 1 cent per ton per mile.

Q. That would result in how much revenue?

A. Five dollars.

Q. And you allowed how much as expense of two terminals?

A. I took an arbitrary figure of 50 cents for each terminal.

Q. That would be 10 per cent of the rate?

A. Yes.

Q. That would be $1 to be deducted from what the company got, for terminal charges?

A. Yes.

744 Q. You were taking a single car-load as an example?

A. Take any shipment.

Q. Take a single car-load, for example: There would not a condition exist, except in a most unusual and extraordinary case, where a car of freight would be carried a distance of 500 miles without using terminals in more than two places?

A. Oh yes.

Q. There would be?

A. Yes.

Q. Taking a train that would start from St. Louis, bound for Omaha, and assuming that was 500 miles, for the purposes of the example,—unless it was a refrigerator train, or a live stock train, especially made up for the purpose, that car would be in a train in which there were cars bound for points between St. Louis and Omaha, wouldn't it?

A. Probably there would be some.

Q. And there would certainly be cars picked up by that train at each end of a freight division, wouldn't there?

A. Probably.

Q. Well, at every place that you picked up a car or set out a car, the train would, to a greater or less extent have to be kicked to pieces?

A. Not to a great extent. It would be switched some, but to a very much less extent. The terminal charge would be a very

745 small fraction on the movement of the through car, as compared to the terminal expense applicable to the car that had to be sent in to a station, then switched to a side track upon which the train was pulled in, then put over on the team track, then have it checked up and the car billed and have the expense bills made. What would happen on a through freight, in practice, would be to put it in at Brookfield, say; the St. Louis-Omaha car would stand intact on the track on which it was pulled in. They would put on cars at the front or at the back end, in perhaps 20 minutes, and then go on.

Q. When you speak of a shipment handled by a through train, do you mean less than car-load shipments?

A. Either.

Q. If there was a local train running from Hannibal to Brookfield, and it had to be put out at a station between those points, your yard master in making up the train would place that car so it could be taken out with the least movement possible?

A. I hope so. He is supposed to do it th-t way.

Q. That would be the purpose and instruction of the railroad?

A. Yes.

Q. It would be the same with the through freight train running say from St. Louis to Omaha. But wherever you had to take up a car or pull off a car, either at the end of a freight di-
746 & 747 vision, or between, the train would have to take a side track, wouldn't it?

A. Yes.

Q. And switching would be proportionate to the good judgment of the yard master in making up the train and putting in the cars where they could be taken off or put on easily?

A. Yes.

Q. But here is the point that perhaps you miss: We start a train of 20 cars of merchandise from St. Louis to Omaha; that is not an excessive amount to go. Those 20 cars are put together in St. Louis, solid, and go right straight to Hannibal in one train. They are not uncoupled, nothing is done to them, but they are pulled in on a side-track in Hannibal. The engine is uncoupled, and they take off four or five cars off that train, and they put on whatever cars go west. There is no switching there. There is no switching in Brookfield. There is no switching of the 20 cars at St. Joseph. The only reswitching or clerical labor, or standing ground, is the side track on which the- pull in. Whereas, in the case of the local car going from A to B, you have to set it off on the side track, where it may stand three or four days or a week, before we can get it unloaded. You have to have a clerk to check it up; it has to be watched, there is danger of damage, and a lot of things that enter into the terminal expense. Fifty cents is a very low figure for the complete
748 handling of the shipment.

Q. I understand you, and the point you make is the extent of terminal handling of such a shipment as you have indicated is, in the ordinary course of events, less expensive terminal handling than would occur in local freight trains.

A. Yes.

Q. But you would have to have those terminals at those points, for the train to go upon them, wouldn't you?

A. Yes, but not switch so many.

Q. You wouldn't have to have your tracks run up into business sections of the town?

A. It practically takes a piece of ground, for your car to stand on and be unloaded, 50 feet, and counting the wagon way, twenty feet wide. You must have 1,000 feet of ground to have that car stand there and let the teamster get there to unload it. A side track where the through freight cars have to stand takes a piece

of ground 50 feet long and 12 feet wide. It is next to the main track, close to it, and not off in the more congested part of the city. It is not switched back and forth, but it is pulled in there and stops. Sometimes we have solid trains of 50 cars, where not a thing is done to them from Seattle to St. Paul, not a single thing done, except one engine pulled off and another put on.

Q. In the example you have given, in a place where you have those team tracks you spoke of, and where you have to have
749 room for the cars to be loaded and unloaded, that would apply particularly to the large commercial centers?

A. I don't know what you mean by "large." It would apply to places as large as Macon. We spent a lot of money when I was with the Hannibal and St. Joseph, at Macon, trying to have a place to do local business. I think we spent something like $4,000 trying to fix that place up.

Q. Are you using "through" and "local" freight in the same sense that I have described them?

A. I don't know if we do or not. As I understood the objection that the counsel of the railroad interposed, they understood "local" freight to mean freight moved in Missouri.

Q. I am asking you about local freight without reference to whether it originates or ends in the State, and I understand you have been giving it the same meaning?

A. I am frank to say that I consider it local, even if it crosses the state line.

Q. There is no misunderstanding between us. Local freight is what is handled on local freight trains. And through freight is what is handled by through freight trains, in your testimony?

A. Yes.

Judge SPENCER: In the further examination I think we ought to confine ourselves to the first definition of local freight. We agree-, when we started out, and it was Gen. Hadley's suggestion, I think——

Gen. HADLEY: Not mine.

750 Judge SPENCER: All I want to say, is, we want to at least arrive at some understanding as to whether "local" freight means state freight or not. I don't want to object to the witness, but I don't want to be mislead about it.

The MASTER: The misunderstanding, if any exists, is between counsel on the opposite sides of the case, and not, so far as I can see, between cross-examining counsel and the witness. It is all important to the parties and the Court that cross-examining counsel and the witness understand each other, so that the witness may intelligently answer the interrogatories put to him. Re-examination may develop the fact that the witness does or does not, as the case may be, regard "local" freight as freight local to the State of Missouri, or local in another sense; but that can be determined later.

Judge SPENCER: You know our definition of "local" freight in this case, up to the time of the examination of this witness, has been State freight. That is so on both sides. Now it is fair to

that attorneys on both sides that if that term is used in a different sense, we should understand that he is so using it.

Gen. HADLEY: It is perfectly clear that there is no misunderstanding between us on that point. There is no misunderstanding between counsel and myself, or between the witness and myself on that point.

751 Mr. HAGERMAN: Let us see what the record says——

Gen. HADLEY: I don't want to argue that question now, because it is immaterial.

Q. A through shipment of freight over a long distance would use more terminals, more likely, in large commercial centers, than a shipment for a short distance, wouldn't it?

A. Yes—I will change that. It would use two terminals in large commercial centers more than the local shipment. But many of the shipments would use one terminal in an expensive place, and one which you would term a less expensive place; but the volume of business done in the less expensive place, when divided into the total expenses would probably bring a higher terminal unit of charge than at the more expensive place.

Q. You would not say that a shipment beginning at St. Louis and ending at Omaha, and using terminals at the end of freight divisions, at least to a certain extent between those two points, would have the ratio of 1 to 10, that ten local shipments of 50 miles each?

A. I would come pretty near saying that.

Q. A 50 mile shipment that used two terminals, would not, in all probability, use two terminals in the large commercial centers?

A. No. But let me give you an example that will perhaps clear up my thought about it: Say a shipment starts from what you call an expensive terminal, and a terminal charge would figure, we will say 80 cents a ton, for example—I think it would figure more than that if you take everything into account. It

752 figures 80 cents a ton because you have so many tons handled that you divide the total large expense by a very large divisor, and you get 80 cents. Now that ton goes up to a station on the Keokuk and St. Louis line, say Arbor Farm, which is a place up there about 50 miles out; now, when you take all the local expenses of that little station, Arbor Farm, and divide them by the number of tons handled, it is a grave question whether it would not be more than 80 cents, because you have a small divisor.

Q. Yes, but doesn't your through freight use some of those terminals, too?

A. Only to a very limited extent. Now, you ask my opinion, as I understand your question, whether the through freight moving from St. Louis to Omaha, 800 miles, whether it is fair to say there are only two terminal charges on that, and fair to say that the terminal charges on the ten short haul shipments are ten times greater.

Q. Yes, that is the question.

A. I say, I would not say absolutely the same, but I would say mighty near ten times, taking everything into consideration.

Q. Wouldn't the fact that at least half of the ten 50 mile shipments were at inexpensive terminals tend to reduce the terminal

charges of those ten shipments, as compared with the two terminals, both of which were expensive?

753 A. I have just tried to make that clear; that the so-called inexpensive terminal, while inexpensive in the total amount of money paid out in a month or a year, as compared with the expensive terminal, yet the number of tons handled and divided into that expense, would leave the cost per ton just as high, or higher, as at the expensive terminal.

Suppose you take a little station, not doing much business, and it has ten tons handled in a month; you pay the agent $50, and the cost of heating and lighting, say $5; interest and repairs and depreciation on the building. 10 tons would give you $6.50 a ton for terminals.

Q. But usually the terminal at the small station that you speak of has one side track?

A. It has a house track. The terminal freight is set on the house track outside the side track.

Q. You would have to maintain a terminal there, for the passing of trains alone, without reference to the handling of freight, wouldn't you?

A. We would not have to have a warehouse. And we would have a very different type of building.

Q. The warehouse would relate to less than carload shipments?

A. It would relate to all business we were doing.

Q. You don't handle carloads in warehouses?

A. We try not to.

Q. It is most unusual, when a carload is handled in a warehouse, isn't it?

754 A. Take the carload of barbed wire; sometimes it has to be put in the house.

Q. That is a most unusual case, isn't it?

A. I don't know that it is.

Q. You spoke of Station expenses: You have to have a station, a house, and an agent, for the handling of the passenger traffic, if you do not handle the kind of freight, don't you?

A. In some cases.

Q. It is not fair to say that the maintenance and expenses of a station, and a station agent should be assigned to local freight traffic in relation to the expenses of that kind of traffic?

A. Exclusively, no. But if you are going to adopt that line of reasoning, a portion of that will be apportioned to through passenger traffic, the same as to through freight traffic. It comes back practically to the question of through freight traffic, as to through local traffic.

Q. In addition to that, a station would be necessary to be maintained for what you call through traffic or long hauls, as for short hauls?

A. No sir.

Q. Don't you regard your small stations as the feeder and place where the long hauls originate?

A. Sometimes. But some of them are not feeders, as I tried to

point out in answering Judge Schofield's question about small stations. Some of those small stations, instead of being feeders,
755 might be termed "suckers." It is a grave question, whether, taking all your local business, we get back all our money. I don't know, but I think it is a very close question.

Q. Assuming that you are right in your idea that the cost of carrying a 50 mile shipment so far as terminals are concerned, is ten times greater than the cost of carrying a ton 500 miles in ten 50 mile shipments, as I understood you this morning you gave the rate as 1 cent per ton per mile, on one, and 2 cents per ton per mile for the others?

A. Yes.

Q. And you apportioned 50 cents for the terminal charge at each end for each shipments?

A. Yes.

Q. That is, the terminal charges on the 500 mile shipment would be $1 and the terminal charges on the ten 50 mile shipments, would be $10, or one to ten?

A. Yes.

Q. You are familiar with the classification in Missouri?

A. Moderately so.

Q. Taking class A, according to the tariff existing in Missouri, without reference to the enactment of this law of 1905, on a shipment of 25 miles the rate is 10 cents per hundred?

A. That is the present rate or the new rate?

Q. The rate without reference to the law?

A. Yes.

756 Q. And the rate for 250 miles is 27 cents?

A. Yes.

Q. That would result in the company receiving how much on a 30,000 pound car for 25 miles, and how much on a 250 mile shipment?

A. That would be $30 on the 25 miles.

Q. And how much on the 250 mile shipment?

A. $81.

Q. Now, the tons mile upon the 25 mile shipment would be how much?

A. What did we figure, the 20 tons?

Q. No, 15 tons.

A. 375, wouldn't it?

Q. And it would make thirty-seven fifty for the 250 mile shipment, wouldn't it, or ten times as much?

A. Yes.

Q. Now, take the ten 25 mile shipments, and the earnings of the company would be how much?

A. $300.

Q. From that $300 earned upon those ten 25 mile shipments, what terminal expenses would you deduct, taking your basis of 50 cents for each terminal, and assuming there were two terminals on the 25, and ten on the 250?

A. You would have $1 on each one, wouldn't you?
Q. Yes.
A. Ten of them would be $10.
Q. Then it would be $10 terminal expenses to be deducted
757 from the $300, and $1 to be deducted from the $81?
A. Yes.
Q. There were 15 tons in each case, that counted?
A. We haven't that right, then.
Q. There would be a terminal charge of 50 cents per ton, we figured it?
A. Yes.
Q. Then, taking a terminal charge of 50 cents per ton on the 250 mile shipment, you would have $7.50, wouldn't you?
A. Yes.
Q. Or $15 if you counted for both?
A. That is right. And you would have $150——
Q. For the ten 25 mile shipments?
A. Yes.
Q. So that would result in the company receiving 150 in revenue for the 10 twenty-five mile shipments, after deducting terminal expenses on your basis, and receiving $66 for one 250 mile shipment, after deducting terminal expenses?
A. Yes, on that method of calculation.
Q. That is given from the rates upon classification A. Now, let me give you another example, Mr. Elliott, to work out, if I may: Take, according to the Missouri tariff the rate upon first-class freight for 50 miles; it is 30 cents a hundred; take a 40,000 pound car, which would be 20 tons, and your income upon 1 car handled fifty miles would be $120?
A. You never would have it.
Q. Take 15 tons?
758 A. You never would have a local first-class shipment in one car, more at the outside than 500 pounds of first-class freight.
Q. The relation between the two would be what?
A. You might have 40,000 pounds of first-class freight from St. Louis to Denver, or from St. Louis to Omaha.
Q. First-class freight includes less than car-load lots?
A. I mean freight classified as first-class.
Q. Did you*m* ever have a shipment of less than car-load lots a distance of less than 500 miles?
A. Yes sir. We load cars from St. Paul to Takoma, every day in the year.
Q. Assume that you have a first-class shipment of freight 50 miles, and then one of 500 miles?
A. I just pointed out that you were making an impossible assumption.
Q. The probability of a carload going 50 miles is much greater than one going 500 miles, isn't it?
A. Yes, but not 40,000 pounds.

Q. Take a small one, for illustration. The revenue upon 20 tons would be $120, wouldn't it?

A. Yes, that rate would make $120.

Q. And the rate according to the Burlington tariff schedules upon the first-class freight for 500 miles is $1.64?

A. Yes.

Q. What would be your revenue upon the same freight for 500 miles?

A. $656.

759 Q. If you had ten shipments of 50 miles each, you would get ten times 120, which would be $1200?

A. Yes, but we wouldn't have them.

Q. And if you deducted the terminal charge of $1 on each shipment you would deduct $200, wouldn't you?

A. Yes.

Q. That would leave the railroad $1,000 revenue upon the ten first-class shipments?

A. Yes, and if we could do that kind of business in Missouri, we would be mighty well pleased.

Q. And your revenue after deducting terminal charges upon the 500 mile shipment would be how much?

A. $616, wouldn't it?

Q. No, you would deduct only $20, wouldn't you?

A. Yes, that is right; it would be $636.

Q. The Burlington company publishes a tariff to the world that it will receive freight for 500 mile shipment at this rate, and in Missouri the rate is fixed by law in the classification I have given you?

A. Yes, but you omit to take into account, I think, the real facts of commerce as they exist. There is not any movement of solid carloads of merchandise between small stations. It doesn't exist. If you get an average of 500 pounds to the car on all classes of merchandise, first, second, third and fourth, we consider we are doing very efficient service.

760 Q. Do you mean to say you would not have in a certain period ten shipments of 50 miles each radiating out into Missouri from St. Joe and Kansas City?

A. I say we would never have ten shipments of 40,000 pounds of first class freight from any distributing point in Missouri to any local point in Missouri.

Q. The ratio, or percentage of increased revenue to the company would be the same if you took 1 ton, wouldn't it?

A. I would have to figure that, and see.

Q. Take 1 ton: The rate would be 30 cents for 50 miles: that would give you a revenue of $6, wouldn't it?

A. Let us take 1 ton. 1 ton 30 miles; you have to take a car to put it in, to get $6, for going 30 miles.

Q. And going 500 miles you get how much?

A. Going 500 miles we would put 30 tons in that car.

Q. I am assuming that your tariffs were given in view of possible shipments?

A. And I am assuming what I think are the real facts in the case; the volume of trade moving; so instead of their being 1 ton to move 500 miles, we know from experience that we put 20 tons in that car.

Q. You charge them the same rate as if there was only 1 ton in the car?

A. Yes.

Q. The revenue to the company would be the same, whether you have 20 or 1 ton in the car.

A. The use of the car to the company; I am figuring what we are going to get for the use of the car.

Q. I am figuring on the revenue on the particular ship-
761 ment.

A. Well, go on and make your figures.

Q. Your revenue for 1 ton 500 miles would be $32.80?

A. Yes, that is right.

Q. The terminal charge w-ich would be deducted from that would be $1?

A. Yes.

Q. That would leave the revenue to the company $31.80, wouldn't it?

A. That is correct.

Q. If you had ten first-class shipments of 1 ton each, you would get $60, wouldn't you?

A. Yes.

Q. And if you deducted $10 for terminal charges it would leave you $50 income from those shipments, wouldn't it?

A. That is right.

Q. Then upon the ten 50 mile shipments, handled by local freight trains, the revenue of the company would be $50; and upon the 1 ton shipment 500 miles, the revenue would be $31.80?

A. That is right, according to arithmetic.

Q. Take second-class freight: What does that include?

A. I don't remember what the classification is.

Q. I don't care to go into the second class; it works out the same percentages.

Now, this first example I gave you where there were ten shipments
762 25 miles each, and 1 shipment 250 miles, the revenue from the 10 shipments of 25 miles each, being $150, as against $66 revenue for the shipment 250 miles, was given to you upon the basis of the rates in Missouri. Now, you understood, didn't you, that that assumes that both shipments were entirely within the State?

A. I don't know.

Q. I gave them both to you on the basis of Missouri rates?

A. I don't know whether you did or not.

Q. That is, Class A a 10 cent rate per 100 for 25 miles, and a 27 cent rate for 100 for 250 miles is, according to the rates existing in Missouri, unaffected by this law, as I understand?

A. Yes.

Q. Now, if part of the 250 miles were in Iowa, or in Illinois, so that the rate applied would be an inter-state rate, wouldn't that rate be less than 27 cents per hundred?

A. As apportioned to Missouri?

Q. Yes.

A. Yes, it would have to be, if you allowed anything to the State.

Q. I mean, proportionately less. I mean the company would get less for hauling a 250 mile shipment, if the inter-state rate was affected, as it would be affected by a portion of the haul being in a state where the rates are lower than they are in Missouri?

A. I don't follow your last thought at all, in the second question.

763 Q. My point is this: I have given you an example of a comparison of ten 25 mile shipments all being in Missouri, and 1 250 mile shipment being in Missouri; the rate upon each being fixed by the rates existing in Missouri, unaffected by this law?

A. Yes.

Q. Now, if the 250 mile shipment I take as a basis of comparison with the 10 25 mile shipment, had been 125 miles in Illinois and 125 miles in Missouri, I say the rates would not be as high as if all the 250 miles were in Missouri, would they?

A. I don't know.

Q. That is, assuming that the rates in Missouri are 25 percent higher upon that classification than they are in Illinois, the interstate rate would not be, any way, more than the sum of the locals?

A. I don't know. I think you will have to get someone who knows the details of the tariffs to answer that question.

Q. I was assuming, for the purposes of the question, that I did know them. If the rate in Illinois was less by 25 per cent than the rate in Missouri, it would naturally follow, wouldn't it——

A. I think I see your point. Let me see if I can put it to you: If the rates for 125 miles in Illinois on this particular thing were 10 cents; and the rates for 125 miles in Missouri were 17 cents, you would get 27 cents, 10 cents of which would go to Illinois

764 and 17 cents to Missouri. If those were the facts, the answer is plain, that the Missouri part of the shipments gets a little higher rate.

Q. That is not the idea I was asking about. If the rate in Missouri for 125 miles was 15 cents per 100, and the rate in Illinois was 10 cents per 100, then your interstate rate for that 250 mile shipment would not exceed 25 cents per 100?

A. No sir.

Q. And yet, if the whole 250 miles were in Missouri, your rate in Missouri would be 27 cents?

A. That seems to be correct, based on that assumption.

Q. Do you know that to be the fact?

A. I don't know a thing about how the rates are for 125 miles in either state.

Q. Mr. Elliott, you gave it as your opinion this morning that in the handling of freight by local freight trains, or in the handling of local freight, there was a larger percent of the station expenses which should be apportioned to that traffic than should be apportioned to through traffic, than the percent of the volume of the two classes of freight.

A. That is to say, do you mean to say I took the ground that one ton of local freight would carry with it a greater portion of the expenses than one ton of through freight?

Q. Yes, of the station expenses you spoke of?

A. Yes, I think so.

Q. Because there is more use of the station, or of those physical properties for the maintenance of which the station expenses
765 were incurred, in doing the local business than for doing the through business: That was your theory?

A. In a general way, yes.

Q. The cost of maintenance of station, or what you call Station expenses, is very small, isn't it, as compared with the cost of maintenance of tracks?

A. Yes, I should say so. I wouldn't say "very small" but very much less. I could not give you the exact relation without looking at some accounts, but it is much less.

Q. And in the apportionment of the expenses for the maintenance of track, how would you apportion the expenses between the local freight business and the through freight business?

A. I never tried.

Q. Wouldn't it be your opinion, Mr. Elliott, everything considered, that a division in proportion to tonnage (by that I mean volume) that a division of the expense of maintenance of way as between volume of local freight business, as compared to through freight business, would be unfair to the local freight business?

A. No sir, I don't believe it would.

Q. What trains are the heavier trains?

A. The through freight trains are the heavier trains.

Q. And which run the faster?

A. The through trains.

Q. And which engines are the heavier?

A. The through engines.

Q. And isn't it the weight of the rolling stock and the
766 speed at which they run that makes necessary the expenses of maintenance of track, more than the lighter equipment and slower operations?

A. Yes, but you have a light track that has to be maintained at local stations, that the through trains never go on, and the heavy trains cut no figure.

Q. But that track maintained at those stations is simply a pair of old rails laid upon ties?

A. What road have you been travelling on?

Q. I am taking the testimony of your experts before the State Board of Equalization of the State of Missouri?

A. No. I think the house tracks and team tracks are put up in pretty good shape: They are ballasted with cinders and pretty well tied. Of course second-class rails are put in, not as good rails as on the main track. When you asked the question about the maintenance of the main track, whether it is fair that should be charged up against the local absolutely in proportion to volume, I should have to say it would not be fair. But when you take all the things

that go to make up maintenance of way and structures, it is a grave question whether an equal division would not be fair—I mean, taking everything into consideration.

Q. The expense of maintenance of these side tracks at small stations is very insignificant, isn't it? You don't have your section hands working on those unless there has been a wreck, or some accident.

A. Yes we do, we have to keep them in order.

767 Q. But isn't practically all the work of maintenance of track, upon what you call passing tracks, or operating tracks?

A. Not practically all. It is a larger proportion.

Q. But the proportion of expense of maintenance of way, that is done upon these side tracks, is a very small portion of the entire expense, isn't it?

A. I couldn't say whether very small or not. I know in some cases, in order to get a side track to an industry we have to build a very expensive bridge, and maintain it; and nothing ever goes in there except a few cars for the given industry. Or, we have to run a track at a place like Chillicothe, a mile or two away from the main line, and have to maintain it in good order, whether one car goes on it or ten cars, as we don't want to take the risk of derailment there.

Q. Those are exceptional cases?

A. Those exceptional cases are the very things that come up and that would, to a certain extent, balance the cost of maintaining the through running track.

Q. Do you count, in the cost of maintenance, the original cost of construction?

A. No, I do not.

Q. If only one or two trains ran over it a year, there wouldn't be much cost of maintenance?

A. It has to be kept so that when trains do go over it, they can move.

Q. I understood you to say that it was the operation of

768 trains upon the track that makes necessary the cost?

A. The elements have a good deal to do with it. If you do nothing over a track and let it alone for a year, you have to spend a lot of money to put it in order to enable a train to move over it.

Q. Whether I am right, or you are right, on that proposition, you agree with me on the main proposition, as I understand, that a division of expense of maintenance of way between local and through freight is certainly not unfair to the local freight if it is divided according to volume?

A. I do.

—. You have given it as your idea that what are known as expenses for station agents, clerks and laborers, that the proportion of that expense to be assigned to the local freight business, should be made upon a basis other than the volume; that is, there would be a larger proportion of that business to be assigned to local than to interstate freight; can you give your idea as to about how much?

A. I think we should have to take each station by itself. It is very much more.

Q. Have you any opinion as to the expenses as a whole for the State of Missouri, for station agents, clerks and laborers; how much more of that item of expense should be assigned to local traffic than to the through freight traffic?

A. I don't know that I could give an intelligent opinion about that. Three or four years ago I might have, but I don't think I could now.

Q. I find, in the classification of expenses of the Burling-
769 ton system, they have what they call "station supplies:" What would be your opinion as to that item of expense between through freight traffic and local freight traffic?

A. For the State as a whole, counting St. Louis and Kansas City?

Q. Yes.

A. I should say, I don't believe I could give an intelligent opinion about that. I don't know how the volume of through business at the big terminals compares now with the local.

Q. Can you give any opinion upon the item of expenses in the accounts of the Burlington system, called "station furniture": How the expense incident to that should be divided?

A. I should say, Mr. Attorney General, in a general way, that all of these items, outside of the few big terminals, like St. Louis, Kansas City, St. Joe, and Hannibal, if you like, that a considerable proportion of all those expenses was made necessary by reason of the local business. How it would divide at the great big stations, I do not know now.

Q. You couldn't give an opinion as to whether a division of those expenses I have referred to, those three, should be divided any differently than upon the volume of the traffic?

A. No, I think, outside the big terminals, I should say it would have been a great deal more to the local than the volume of the business—a great deal more.

Q. The element of expense, or the proportion of that expense,
which comes from the large terminal, is a very considerable
770 proportion, if not the larger portion, of the entire expense?

A. It is a large proportion. I cannot say whether more or not. You can easily see a small expense, where the entire expense of the agent's salary, heating, lighting, supplies, furniture, was all for the local business——

Q. Including passenger and freight?

A. Yes, including everything.

Q. But, comparing the proportion of that expense which should be assigned to local freight as compared with through freight business, you get a much more difficult problem, don't you?

A. When I made that statement, I meant you could easily imagine a station where all expenses of every kind, would be assessed against the local business because there wouldn't be any through business.

Q. You said you included the freight and passenger business both, in the local business?

A. I said all assignable to through freight would be assignable to local freight, as against through freight.

Q. Take another item there, "switchmen, flagmen, and watch-

men"; could you give any idea as to how that item of expense should be apportioned between your local freight business and your through freight business?

A. I should say switchmen, flagmen and watchmen would be more for the through business than for the local, because they are mostly at the large, congested points. What the ratio would
771 be I cannot tell.

Q. Take the item of "switching"; how would you say that should be apportioned?

A. On the number of cars. If you have ten through cars, and ten local cars, the switching would divide evenly.

Q. And if it took a larger number of cars in your through freight business to produce a dollar in revenue, than it did on your local freight business, then you would have a larger proportion of that expense assigned to the through freight business than the proportion of its volume?

A. Yes, based on cars.

Q. Now, an item here is "telegraphic expenses"; how would you say that should be apportioned between the expenses of doing the local business, as compared with the expenses of doing the through freight business?

A. Well, I should say on the basis of volume would not be unfair, if you are going to divide it at all. It would be a question whether that would be fair to the local business. Sometimes the telegraphing is more about through business on the main line, and sometimes on the branch lines it is more about local business than about through business.

Q. A division on the basis of volume would certainly not be unfair to the through business?

A. No.

Q. The item of expense known as "proportion of operating expense of terminals": How would you divide that as between
772 local and through freight business?

A. On a tonnage basis, I think.

Q. That is, divide it equally, according to volume?

A. Yes.

Q. Upon that item of station service, I believe you said on that you thought the larger proportion should be assigned to local freight business in a division between the two classes of freight, than the volume of the two classes of business represent?

A. Yes, I think so.

Q. Now, Mr. Elliott, if it was lawful for the Burlington railroad to do so, and it should quit hauling any local freight in the State of Missouri, do you think there would be any appreciable reduction in the expenses of station service, in case you still continued to do your local and through passenger business and your through freight business?

A. Yes, quite a little.

Q. Can you give any idea how much?

A. No.

Q. Wouldn't it be a very limited reduction?

A. No, I think we could cut out a whole lot of expenses.

Q. Could you abandon a single station?

A. No, but we could cut out a good many laborers and have only a ticket agent where now we may have five men.

Q. Do you know of a station where laborers are maintained whose labor is not necessary in keeping the operating track in condition?

773 A. Elsberry, Mo. They have two warehousemen there who load and unload local freight.

Q. You mean by "local freight" less than carloads lots?

A. Yes.

Q. But you would still have to keep them for handling less than carload lots in through shipments, wouldn't you?

A. No, I think the agent could do that.

Q. But with less than carload shipments you maintain two men to handle them, and they may come from outside the State of Missouri, or be destined for outside the State of Missouri?

A. They might.

Q. You would have to examine the way-bills themselves to determine that?

A. Yes.

Q. Take the item of expense known under the heading of "freight conductors and brakemen"; how would you divide that item of expense?

A. On a train mile basis.

Q. That would be according to the volume of local and through freight business?

A. No, we have to pay more for running a local train with perhaps only two or three cars in it than we might pay for a through train with fifty cars.

Q. And you can give no idea as to the apportionment of expense between the local and the through freight?

A. I could not, without a detailed knowledge of the way the business is moving, and an analysis of it. But I know

774 that local freight trains are very often run with two, three, or ten or twenty cars; whereas the through freight trains are handling thirty, forty, and even sometimes sixty; and it takes just as many men for the small train as it does for the big train, and it takes just about as much fuel to handle the light train as the big one, because of the stops and more or less switching at the local stations.

Q. But are not those expenses, and the method of handling those local trains, which cause this additional expense, necessitated by the collection and distribution of through freight?

A. Not necessarily; they do some of it.

Q. If you would do away with your local freight trains which both collect and distribute local shipments from the ends of divisions, then you would have a proportionately large amount, or an increased large amount of switching and service for the train men on the through trains?

Q. Yes, there would be more.

Q. In other words, Mr. Elliott, these expenses dove-tail into each other in the two classes of freight business, don't they?

A. Very largely.

Q. That is, the local freight trains are maintained, partly, at least, if not largely, as ancillary to your through freight trains?

A. I would not put it as strong as that?

Q. How strong would you put it?

A. I would say they were maintained entirely for the
775 local business, and incidentally picked up and took the through business to a division point.

Q. But if you didn't have the local trains to pick up and take to the end of a division, the through freight, there would be an increased expense in the handling of your through freight; so the expense of operating the through freight train, is, of course, reduced by having these local freight trains to do this local work?

A. Possibly so.

Q. Don't you think that is a fair argument?

A. It would do it some; if we had no local trains there would be some increase of your through trains' cost.

Q. "Freight trains supplies and expenses"; what does that item include?

A. Brooms, brushes, lanterns, oil cans, etc.

Q. How should you say that should be divided?

A. Approximately on a train mile basis.

Q. It doesn't take any more brooms, brushes, or oil cans on an engine that is handling a local train than one that is handling a through freight train, does it?

A. No.

Q. Then, would not a division, according to volume of traffic, be a fair division?

A. No. Because the local freight train is handling 200 tons of through freight, and the through train is handling 2,000 tons.

Q. You are getting into the question of earnings?

776 A. No, I am not touching it. I am talking about volume.

Q. But in proportion to volume, there are no more brooms or brushes, or supplies used in a year upon local than through business?

A. Yes, there is. Suppose it takes 1 broom a year: The engine in the through freight handles 2,000 tons and the engine in the local freight service handles only 200 tons. One broom in one case has been used for 200 tons and the other has been used for 2,000 tons.

Q. The division would be simply a division of train service?

A. I say, on a train mile basis.

Q. Take all of those expenses relating to the equipment and keeping in condition the engine or the cars, used in the same class of traffic, you would think it should be divided upon a train mile basis, such as oiling cars?

A. No, oiling cars would be on a straight car mile basis.

Q. I meant car mile instead of train mile. But all the time this is true, isn't it, that the greater portion, if not all of that ex-

pense, which should go to local traffic, in addition to the relation existing between the volume of the two traffics, is necessitated to a certain extent in hauling today the through business?

A. It is, on certain lines. There is a great deal of local business in Missouri, where there is very little through business moving over the same lines as the local business is moving.

777 Q. Which lines do you mean?

A. Most of those branch lines.

Q. The north and south lines?

A. Yes. But take it on the Hannibal and St. Joe line, where an enormous amount of through business is moving, no doubt the local freight helps out the through freight by bringing the business to the terminal point and thus prevents the stoppage of the through trains at intermediate points.

Q. What does "expenditures for train service" mean?

A. Train service includes a whole lot of things; wages of conductors and brakemen——

Q. How would you divide that item of expense?

A. That, in a general way, is divided absolutely on the pay roll. If they pay so many dollars to the conductor of a way-freight train, it is all charged to way-freight service. And if they pay so many dollars to a through freight conductor, they charge that to the through service. A joint man runs a part of the time on the passenger train, and part of the time on a freight train, and they make a division accordingly.

Q. I mean, a division as between through and local freight?

A. The local wages are higher than the through wages.

Q. Why is that?

778 A. It is harder work. On the local trains they have to load and unload freight at the local stations. And they have longer hours. The local freight cannot get over the road as quickly as the through freight trains.

Q. Isn't the delay in getting over the road due to a large extent to getting out of the way of the through freight and the through passenger trains?

A. No, it is due also to the volume of business.

Q. Due also to the other business?

A. Meeting the other trains is an important element of the business.

Q. This additional labor they have to perform is caused by the less than carload shipments?

A. Yes; package freight; and not only that but the setting out of freight at the local stations. They have to set out the empty car at the stockyards, say. It may take half an hour or an hour to do that. They may have to pick up an empty car to take out to the coal mine, and after they get it to the coal mine they may have to set it out. That all takes a great deal of time. That is equalized more or less by the wages paid to the way-freight man, as compared to the wages paid to the through freight man.

Q. Is there any part of the expense of operating through freight trains, which is not assignable solely to the operation of such trains?

That is, the expense incurred for the operation of throug- freight trains is simply for the oper- and carrying of that kind of freight?

A. Well, I don't know that I can answer that question. I don't think I quite understand your thought.

779 Q. Perhaps I can make it clearer by using an illustration: A portion of the expense of operating what you call your local freight trains, is necessitated by the collection and distribution between terminals, or between division points, of through freight. We have agreed upon that, I believe. Now, the expense of the operation of through freight trains, is assignable entirely to the conducting of that class of freight, isn't it?

A. So far as we can, we assign it to that. Take the Hannibal yard, one engine might be switching four or five cars, and one may go into the local freight train, and the other three go into the through train. I don't know that I really follow what is in your mind now.

Q. I want to make myself clear to you, because I want your ideas upon these things. If the expense of doing the local freight business—I mean by that operating local freight trains in Missouri—was, say, $5,000,000 for a certain period, within a certain territory, and the expense of operating through freight trains for that same period and in that same territory was $20,000,000; it would not be proper to charge all of those expenses to operating—all of that $5,000,000 for operating expense to local freight because part of that expense is incurred in the collection and distribution of the through freight, isn't it?

A. A limited amount of it.

Q. The $20,000,000 of expenses in the operation of through freight business is assignable solely to the conducting of

780 through freight traffic?

A. Yes, I should say it was.

Q. I think I have made myself understood, and I understand you.

Now I ask you about expenditures for train service: "Expenditures for engine service," would your apportionment between local and through freight business be the same upon that item?

A. That would be based upon the train mile, practically.

Q. Take the item of expense, No. 21, I believe it is: "Engine Dispatchers, wipers, round-house helpers": How would you apportion that expense between the local and through freight business?

A. On the basis of engines employed in the business.

Q. In relation to the number of engines?

A. Yes, if they had one engine in through business, and one in local I should say one-half of the expense should be for the local and one-half for the through business.

Q. And if you had six times as many in the through business as in the local, the proportion would be the same?

A. Yes.

Q. But is there any increased expense in the wipers and round-house helpers, which is made necessary by the large terminals in

the large commercial centers, which should more properly be assigned to the through freight traffic?

A. Well, there may be a trifle in some of the large cities. Wages may be a trifle higher. I cannot tell you as to that. But
781 wages are getting to be about the same everywhere now.

Q. Now, in the division of fuel for locomotives. I believe you said you thought an engine engaged in the local freight business would handle more coal on account of the great amount of switching?

A. Very much more apt to handle more than a given through train.

Q. But doesn't it run faster?

A. Yes, but it is not burning coal.

You have an engine standing on a side track doing nothing, and it will burn up a good deal of coal.

Q. But would not the additional speed at which the through freight train is operated more than equal the fuel which a smaller and lighter engine would use in the additional switching it would have to do?

A. I should doubt it.

Q. There would not be much difference in your opinion, would there, Mr. Elliott?

A. I don't know.

Q. In the item "oil, tallow, and waste": That would be the same division, according to the number of engines?

A. That would be on the engine mile.

Q. That is, an engine that runs one hundred miles would use more of that than an engine that runs 50 miles?

A. Yes.

Q. "Water supply" would be something the same as coal?

A. On an engine mile basis,—yes, on the same basis as the coal.

782 Q. Mr. Elliott, you have spoken of the fact that you thought there was a large part of the local traffic that was limited to the State of Missouri and handled by local freight trains?

A. Yes.

Q. It has been testified here that the earnings from freight originating and ending wholly in the State of Missouri in the year 1904, was $1,525,000; and the earnings on interstate freight for which the service was entirely in the State of Missouri was, $6,199,300, a ratio of little less than one to six; now, you say there would be no way of determining the amount of that business that originated and ended solely in the State of Missouri, that was hauled upon local freight trains, as compared with the amount that was hauled upon through freight trains, except by an examination of the way-bills and conductors' reports.

A. I don't see that there would be any, and I don't know that that would tell as to the past. I don't know that they would check up. It could be done as to future business. You could start to-day and figure it out from them.

Q. I understood, whether I asked you the question or not I don't

remember, that a train that runs from one end of a division to another is regarded as a through freight train, one that does no more than to stop to make sidings, or possibly drop off a car?

—. ——.

A. And the average length of those divisions is about 100 miles?

783 A. Over 100, rather than under.

Q. From your knowledge of the difference between business done wholly in the State of Missouri, and your knowledge upon freight rates upon interstate shipments what would you say as to whether the relation of the tonnage of State freight business and interstate freight business would be represented by the relation between their earnings or revenue?

A. Well, the proportion of the tonnage of the local, as compared with what is classified here as interstate, would be somewhat less that the proportion of the earnings. And the local business has a higher ratio.

Q. It appears here in evidence that the local freight business, and I now use the term "local" as meaning freight wholly beginning and terminating in the State of Missouri is 20 per cent of all the freight business done in the State of Missouri; I understand you to say that in your opinion the tonnage of freight handled wholly in the State of Missouri would be less than 20 per cent of the entire freight tonnage handled?

A. I should say so yes.

Q. That per cent would decrease in proportion as the rates upon the wholly state traffic compared with the rate per ton per mile upon the interstate traffic?

A. I don't believe I followed that.

Q. A concrete example may make it clearer: If the average rate per ton per mile of doing the wholly State traffic was twice as much as the average rate per ton per mile for doing the interstate

784 traffic which went to make up the two figures I have given you, then the tonnage haul of the wholly State traffic would be 10 per cent of the entire State traffic?

A. Yes, I should think so. You give the local double the rate of the through?

Q. Yes?

A. You start at 20 and 80?

Q. Yes.

A. You figure, when you say "tonnage," as to the number of tons, or the number of tons one mile?

Q. Tons per mile. That is a correct basis, isn't it?

A. That is a very good unit to compare with. What is your question? Will you put it again, please.

Q. If the earnings bear the relation of 20 and 80 per cent, and the rate per ton per mile received by the company for the wholly state business was twice as much as the revenue received on the interstate business, then the state tonnage would be 1/10 of the entire state tonnage?

A. As I figure it, it would be 1/9.

Q. You are right, and I am mistaken in my calculation. I am a poor figurer. It would be one-ninth.

Assuming the predicate indicated in my question, that the earnings upon business beginning and ending in the State of Missouri were twice as large on the average as on interstate business, and that 1/9 of the tonnage was business local to Missouri; then, if what you have termed through freight trains had as their tonnage 1/9,
785 which originated and ended in the State of Missouri, then there would be no increased expense assignable to State freight business by reason of the increased expense of the operation of local freight trains over the operation of through freight trains, would there?

A. You will have to say that again.

Q. We have agreed, upon the predicate I have indicated, that 1/9 of the tonnage would be for business beginning and ending wholly in the State of Missouri?

A. Yes.

Q. Now, if what you have termed through freight trains, that is, trains running from division point to division point—if the tonnage carried by those freight trains, was freight which originated and ended solely in the state of Missouri, and was 1/9 of the entire tonnage hauled, then there would be no additional expense to be assigned to the State freight traffic?

A. Why?

Q. By reason of the increased expense of operating through freight trains.

A. Why?

Q. Because the same proportion of freight is handled by the through freight trains as the tonnage of the two classes of freight bear to each other?

A. No, but you take your 1/9 on your through freight trains, and your local freight train has still to carry an equivalent
786 amount.

Q. No, I have 1/9 of the tonnage handled by the through freight trains as being freight that originates and ends solely in the State of Missouri; and the business of the Company that does begin and end solely in the state of Missouri is one ninth of the entire business done.

A. I do not follow it, because I do not see that the local freight trains would be running at all.

Q. Mr. Elliott, if the business that begins and ends solely in the State of Missouri is 1/9 of the entire business hauled in the State of Missouri; and the tonnage of the through freight which begins and ends solely in the State of Missouri, is 1/9 of the entire tonnage of those trains, it necessarily follows that the tonnage of the local trains is 1/9 the tonnage that begins and ends solely in the State of Missouri?

A. I don't see it. You have 2/9; 1/9 on the local, and 1/9 on the through train, on your proposition?

Q. Yes.

Judge SPENCER: Do you contend that would decrease the cost of the local trains?

Gen. HADLEY: I will endeavor to make my contention apparent as the case proceeds.

Q. Suppose the tonnage hauled on the through trains was 900,000,000 tons, in a certain period, in the State of Missouri; and suppose the tonnage hauled by the local freight trains was
787 270,000,000 tons, in a certain period; making the total tonnage hauled for the State, during a certain period, 1,170,000,000 tons. Now, if that 1,170,000,000 of tons hauled, 1/9 was tonnage that began and ended solely in the State of Missouri, and 1/9 of the 900,000,000 tons handled by the through freight trains, was that class of freight; and 1/9 of the 270,000,000 handled by the local freight trains was wholly State traffic, then you would have no additional expense to assign to the wholly State freight business by reason of the increased expense in the operation of local freight trains?

A. Yes, I think you would. The more the operation of the local freight train is increased, the more the expense is, and it is a very large one.

Q. I understand that. You so testified, and I am not questioning the accuracy of your statement upon that. But if the local freight train handles 270,000,000 tons of freight in a certain period, and 1/9 of that tonnage is State business, or business beginning and ending in the State of Missouri, and 8/9 is business that either came from or goes to a point outside the State of Missouri, then the increased expense of handling the local trains must be distributed according to the volume of the two traffics, must it not?

A. Let us assume that is the case, and just reverse the proposition of the 270,000,000 of local freight; 10,000,000 tons is han-
788 dled as interstate, and you have 260,000,000 left for your local;——

Q. Certainly. But——

A. Or, on your 900,000,000 tons of local, 10,000,000 is handled as interstate, and you have 890,000,000 as through. It has not affected the expense of your local train that (indicating by snap of the fingers) much; and, you are assuming a theoretical condition that I do not believe exists.

Q. The point I am endeavoring to make clear to you, to see if my idea is right upon it, is this: We have agreed that the revenue produced by hauling a ton of freight a mile in the State of Missouri is a larger revenue on the average per mile, than the revenue produced by hauling one ton of interstate traffic: Now with that reduction of tonnage——

A. What reduction?

Q. The reduction of tonnage to produce a dollar of revenue on freight hauled wholly in the State of Missouri; and you should find by an examination of the way-bills showing the freight handled on through freight trains, that they carried as 1/9 of their tonnage freight which began and ended solely in the State of Missouri, then you would say, wouldn't you, that the through freight trains handled as much State freight as they did interstate freight in proportion of the two classes of freight handled by the company?

A. I don't understand that question.

Q. I am leaving out in this example the less than carload shipments and am simply assuming that the 1/9 of the tonnage
789 of the Burlington company in the State of Missouri for the year 1904 was business originating and ending solely in the State of Missouri, both through and local freight?

A. You are starting with 20 and 80: Does that include this carload business, or less than car-load?

Q. I take both.

A. I asked, simply for information.

Q. Let us stick to the other ratio. Let us assume that a ton of freight carried by the Burlington company in the year 1904, wholly in the State of Missouri produced the same amount of revenue per ton per mile as interstate handled, then, of course the tonnage of State freight to interstate freight would be in the ratio of 20 to 80 per cent, wouldn't it?

A. Yes sir.

Q. Now, if of the tons handled by through freight trains in the State of Missouri, both State and interstate freight, there was 20 per cent which began and ended solely in the State of Missouri, then your through freight trains, which is the cheaper method of transportation, carried their proper proportion of wholly state traffic, didn't they?

A. I should say this. I don't think that question can be answered at all in any accurate manner, with any information we have, and I doubt if it can be obtained. In a general way, I should say this: If your through freight trains happened to pick up, or did pick
790 up the equivalent of 1/9 of all the tonnage handled in the State of Missouri, their doing that would simply mean that the local freight train had had to take some of the through business and handle it on the local train, because the through train had picked up some of the local business. They simply mix up the two trains together. As a matter of fact, I do not think you would find there was any such ratio. There would be some business picked up by the local that would be through business, and there would be some through business picked up by the local; but I don't see that it would have any effect on the general idea that the local train service is a more expensive service than the through.

Q. So you said. You are using the term "local freight" that would be picked up, in the same sense as you have used it all the way through your testimony?

A. Yes.

Q. I am asking you now about freight handled wholly in the State of Missouri, whether through or local freight, under the designation you have given. In other words, if 20 per cent of the tonnage of the through freight trains in the State of Missouri should consist of freight beginning and ending wholly in the State of Missouri, then there would be no additional expense to be assigned against that class of freight—I mean by "that class of freight" State freight——

The MASTER: Intrastate freight?

A. I don't see why.

791 Mr. HADLEY:

Q. Because it is handled on the train——

A. It does not change the expense of running a train between Hannibal and Macon, by reason of the fact that the through train might be handling through freight between Hannibal and St. Joseph.

Q. Assuming that all the traffic done by the Burlington wholly in the State of Missouri was freight handled from division point to division point, and that some of the inter-state freight handled in the State of Missouri was handled upon local trains, then of course the expense of handling local freight would be less than the expense of handling interstate freight, wouldn't it?

A. Yes.

Q. Then, if the amount of the freight handled upon the through freight trains is divided between State freight and interstate freight, according to the relation existing between the volume of the two classes of traffic hauled by the entire system, there is no additional expense to be assigned to State freight by reason of the increased expense in the operation of local trains?

A. I think there is. You don't get rid of the operation of your local trains, under your theory. We still have to run them; still have to handle freight at the station; still have to have the local expense, the local engines, all these expenses going on.

792 Q. But those local freight trains and those local expenses are incurred for the handling of State and inter-state freight, in the relation of volume, of 20 to 80 per cent. You necessarily have the through freight trains——

A. As I understand your proposition, you say that the through trains are going to handle all of this local business, and I claim that is not so.

Q. I ask you now to use the word "state" freight as distinguished from interstate freight.

A. As I understand your proposition, you say the inter-state trains are going to handle all state business.

Q. I say, if the through freight trains handle 1/20 or 1/9, whatever proportion the state freight business iin tonnage bears to the interstate business in tonnage, then the local freight trains must necessarily handle the same proportion of the two classes of freight.

A. That is an assumption I will not agree to. I do not think it is fair.

Q. I was assuming it for the purposes of the question. Our investigation would show that such was the case; that there was 1/9 of the tonnage hauled by what you call your through freight trains as distinguished from your local freight trains, which consisted of business beginning and ending solely in the State of Missouri; and that that was the relation between the tonnage of the two classes of freight for a certain period. Assuming that to be a fact, the local freight trains would handle state and interstate freight in just the same proportion that the through freight trains would handle it.

A. I have to admit that if you assume all these things,
793 which I think are false, the proportion would be changed. But you have not got conditions that permit that way of running a railroad.

Q. Have you any information as to the percentage of freight beginning and ending wholly in the State of Missouri?

A. I have not any, no.

Q. Have you any information based upon experience, as to the per cent of the tonnage hauled by your freight trains, through freight trains, in the State of Missouri, of freight which begins and ends wholly within the state?

A. I know there is a whole lot of business—I have no figures, but based upon experience, I know there is a very large amount of business handled in the State of Missouri, which does not originate and terminate in the State, a very large amount.

Q. Yes, but have you any opinion as to the amount of freight hauled by your through freight trains in the State of Missouri, which begins and ends wholly within the State?

A. No, I could not give you the per cent.

Q. Would you think it would be one-ninth of the tonnage?

A. I do not know. I would not be willing to give an impression as to that. But even if it was, I do not see what it has to do with this business. If it was, you still would have your local freight trains to run.

Q. Yes.

A. And they would still have to do the local business.

794 Q. Yes, and that local business would consist of one-ninth state freight and eight-ninths inter-state freight.

A. No, I do not assent to that at all.

Q. That is, you do not assent that this is a condition existing.

A. No, sir, I do not. I do not believe that for a moment.

Q. You do not assent that my assumption represents the real facts?

A. No.

Q. You do not mean to say that there is not that proportion of tonnage handled on——

A. I am not commenting on your arithmetic or logic.

The MASTER: I understood the witness to disagree with you; he said, even assuming that he did not agree with you.

Gen. HADLEY: I am trying to find out if he did not agree with me on the proposition, that assuming the through freight handled one-ninth of the business which began and ended in the State of Missouri, then would it not necessarily follow that the local train had the same proportion of local and inter-state freight.

The MASTER: I understood the witness to disagree with counsel, both as to premises and conclusion.

Gen. HADLEY: I understood him to say that my conclusion was not right, but I did not understand him to say that he disagreed with me on the assumption.

795 Judge SPENCER: I understood him to say it did not affect the cost of the local trains.

A. I do not see that it has anything to do with the case at all. It is a wholly hypothetical question, and according to my judgment has not anything to do with the case at all. You could set up several other examples, and knock them down, too.

Q. There was one item of expense I did not ask you about: that is the expense incident to advertising and maintenance of agencies: that expense is almost entirely assignable, properly, to the doing of through or long distance freight, and passenger business, isn't it?

A. It is all passenger business, apparently. (Indicating statement). It has not anything to do with the freight, according to this statement. It shows $45 is assignable to freight.

Mr. HAGERMAN: Practically nothing to freight. $45 to freight out of a total of $45,000.

Gen. HADLEY: I did not know that the expense was divided.

Q. What is a fair percentage of operating expense to gross earnings to a road having a good local territory and at the same time being in a position to handle a large volume of through business?

A. I presume about sixty per cent, sixty to sixty-five per cent.

The MASTER:

796 Q. Sixty to sixty-five per cent of what?

A. I understood him to say what would be the ratio of operating expense to gross earnings. East of the Missouri River I should say sixty to sixty-five per cent.

The MASTER: I did not understand the question.

Gen. HADLEY:

Q. In the example I gave you upon Missouri freight, for a 250 mile shipment, as compared with the rates that would be charged for ten 25 mile shipments, what were the relative earnings per ton per mile, after deducting terminal charges?

A. I do not know. I would have to get the figures.

Q. Here it is. I can give it to you. Have you those figures?

A. I wanted to figure out $290 for the ten 25 mile shipments, 3,750 tons one mile. That would give approximately seven cents plus per ton per mile.

Q. On the ten 25 mile shipments?

A. Yes.

Q. And how much on the through shipments?

A. — tons plus, on the through shipments.

Q. That would be three times as much revenue per ton per mile on the ten 25 mile shipments as upon the one 250 mile shipment: What would be the ratio between the rates on ten 50 mile shipments as compared with the rate upon a 500 mile shipment; would it be practically the same ratio?

A. I do not know. I would have to see the rates.

797 Q. There are no rates given for over 400 miles in Missouri: that is why I did not give you the exact figure.

A. There is probably no business moving.

Q. Probably not. This morning when you gave this example

of the absorption of the revenue by reason of the increased terminal expenses on the ten 50 mile shipments as compared with one 500 mile shipment, you took the earnings per ton per mile as two to one?

A. Yes.

Q. Do you mean to indicate by taking that proportion, that that would be in accordance with the facts, or do you take it simply as an arbitrary example?

A. Simply as an arbitrary example.

Q. Do you think these rates I have given you would be the proportion which would reasonably exist between short and long hauls?

A. I should doubt it. I should think this is an extreme example in favor of your side of the case.

Q. That would exist wherever there was a long shipment as compared with a short shipment, at least in the state of Missouri?

A. Possibly, on that one class of business.

Q. And if the long shipment was part of an interstate shipment it would be still more in favor of the ton shipments as revenue producers?

A. It might not exist on the business as a whole; I do not know about that.

Q. Have you any opinion to express as to the difference
798 in revenue per ton per mile on shipments averaging fifty miles, and shipments averaging 150 miles?

A. They should be very much higher, in my opinion.

Q. On the 50 mile shipment?

A. Yes.

Q. How much higher, Mr. Elliott?

A. Three or four times.

Q. And upon shipments averaging 100 miles as compared with shipments averaging 250 miles, what would you say was your idea as to the proportion of revenue per ton per mile that the Company get- from these two classes of shipments?

A. I should have to make some calculations on that. As the hauls approach longer and longer, the rates naturally come closer and closer together.

Q. Mr. Elliott, have you any information, based upon an examination of the records of the Burlington Railroad Company, or from knowledge gained while you were connected with it, as to the proportion of the tonnage that is hauled by local freight trains which consist of freight originating and ending wholly in the state of Missouri?

A. No I could not answer that in detail.

Q. You have no opinion as to the percentage of the tonnage carried by local freight trains, which would be entirely straight freight business?

A. No. I could not give you any figure.

Q. And the same thing would be true as to the tonnage hauled by through freight trains?

799 A. Yes.

Redirect examination by Mr. FRANK HAGERMAN:

Q. Mr. Elliott, you said the word "local" in railroad parlance would cover a class of business that might be inter-state business; you recall that?

A. Yes.

Q. Is that a large or a small part of Missouri business?

A. It is a very small part, in my judgment.

Q. When we use the word "local" in asking your expert opinion, we meant state freight as distinguished from inter-state freight business, and we are led to use the word, because as shown on page 51 of the record, it was suggested that the word should be so used in this litigation: now what do you say as to how much more it costs to do the state freight business *as* it does to do the inter-state freight business. Using those terms instead of the word "local" as used by us?

A. I should make the same reply as I did on the other examination. Taking everything into consideration, it costs to do the state business anywhere from three to six times as much as to do the inter-state business.

Q. I believe you expressed the opinion that it costs at least three times to do the state freight business as to do the inter-state freight business, taking as a basis a division of expenses upon the basis of revenue?

A. I did.

Q. When revenue is taken as a basis there is necessarily, as I understand you, included in your judgment the higher rate, no
800 matter how much it is, from any state business over inter-state business. That is necessarily included?

A. Yes.

Q. But when you figure upon the ton mile basis, that is not so?

A. No, I tried to make that clear by assuming that there was no revenue at all, in figuring upon the ton mile basis.

Q. Now on the ton mile basis, does the higher rate change with each particular shipment?

A. How is that?

Q. Does the higher rate, incident to the increased rate from the state business, increase with each particular shipment?

A. The higher freight rate or the higher cost?

Q. The higher freight rate that you receive?

A. The higher revenue would have to change with each particular shipment.

Q. You mean the increase would depend largely upon the greater number of short shipments?

A. Yes.

Q. What is your judgment as to the easiest, most practical, and most certain way, taking the revenue as a basis and using the multiple of three; or taking the ton mile basis and using the multiple of six?

A. Say that again.

Q. Which is the most direct, certain and practicable way, so as to

include every cent that is received in the way of increased
801 revenue, to take your basis upon the theory of revenue with a multiple of not less than three; or upon the ton mile basis, with a multiple of six?

A. I should say, the revenue basis with a multiple of three.

Q. Because there you have, at all events, included every item of additional revenue received?

A. Yes, you have everything in.

Q. You have been asked in detail as to the various items making up expense of transportation, maintenance of way, and equipment; and expressed your general view as to each item about which such inquiry was made, and considering by itself to be divided: now I want to ask you this: considering everything, your general knowledge of and experience in railroading, your acquaintance with this particular property in Missouri, and all the views expressed by you upon these different items considered alone, is it your judgment the cost would be six times as much to do the state freight business as it would to do the inter-state freight business?

A. At least.

Recross-examination by Mr. HADLEY:

Q. You stated in your former examination, in answer to a question from Judge Spencer, that it was your opinion that it cost from three to six times as much to do the local freight business as it did to do the through freight business; you meant by that, I suppose, three to six times as much to handle a ton of freight by a
802 local freight train as to handle a ton of freight a mile by a through freight train, average cost?

A. Everything that went into the cost of doing the business.

Q. I mean by handling it, the additional cost to be apportioned by way of maintenance of way and structures?

A. Take everything that you could think of that would enter into the expense of conducting the business, cost of plant and everything.

Q. And that was upon the basis of comparisons of the expense of operating local freight trains as compared with the expense of operating through freight trains, including the additional expense necessitated in the operation of local freight trains in the way of maintenance of structures, stations, agents, etc.?

A. In my mind it took in every class of expense you could have.

Q. But that was on the basis of the actual physical work done in handling or conducting the two classes of freight trains?

A. In the plant necessary for doing it.

Q. You stated in answer to Mr. Hagerman that you think there would exist the same increased expense in handling state freight traffic as compared to inter-state freight traffic, done in the state of Missouri: Then you assume, do you not, that all of the state freight traffic is handled by local freight trains, and all of the inter-state freight traffic is handled by through freight trains?

803 A. No, I did not make that assumption.

Q. In case that fact is not true, why do you apply the same

ratio to state freight as you would apply to the operation of local freight trains as compared with through freight trains?

A. As I pointed out some time ago, the local freight business is such an insignificant factor that I threw it out altogether.

Q. How do you know that?

A. I do not know that. I am giving my opinion.

Q. I asked you before completing my examination, if you could give any idea of the amount of inter-state traffic done by local freight trains, and I understood you to say that you could not?

A. I did not understand your question. I testified this morning that the amounts of business moving from Iowa to local points in Missouri, or from Illinois to local points in Missouri, were so small that I did not think it cut any figure in the problem—and I do not.

Q. Do you think that the amount of inter-state freight handled by local freight trains, in the picking up of inter-state shipments between the ends of divisions, and the distributing of inter-state shipments between divisions, is such an inconsiderable portion of the local freight train tonnage handled, as to be unworthy of consideration?

A. I do not think it is very large.

804 Q. I asked you as to your idea upon that proportion of the tonnage, and I understood that you could not give us any idea as to that?

A. I misunderstood your question, then. I thought you asked how much of the local business in Missouri, beginning and ending in the state. And I said I could not tell you as to that.

Q. Can you tell us or give us any idea based upon your knowledge of the figures of the Burlington Company, as to what proportion of the tonnage handled by the local freight trains, is tonnage that begins in Missouri and ends outside of the state; or begins outside of the state and ends within it, or that passes entirely through the state?

A. I should say the local freight trains did not handle a very large proportion of such business.

Q. Then your answer that the same ratio of expense would exist between state freight traffic and inter-state freight traffic, as would exist between the expenses of maintaining the structures, and operating the local freight trains as compared with through freight trains, is based upon the assumption that the local freight trains handle a very inconsiderable portion of the inter-state business?

A. Yes.

Q. If you are wrong upon that point, then your calculation that the same ratio of expense should be considered, is wrong?

A. I think probably that is so.

805 Q. You said that you took the multiple of three, on the theory of additional revenue. I did not understand you clearly upon that. I wish you would explain that again.

A. What I mean is, if you take your own example that you gave a little while ago: if you earn $20 out of $100 on the local state freight business, and $80 on the through or inter-state business, in my judgment it would be one to twenty, three times as much per dollar, as to do the eighty.

Q. Assuming that the revenue was twice as high?

A. No, sir, assuming the revenue was twenty on the local and eighty on the inter-state, as arbitrary figures, I think to do the twenty it would be three times as much per dollar as to do the eighty.

Q. On account of the fact that you entertain the opinion that the revenue derived from the average ton per mile on what you call local freight, and now made synonymous with state freight, is twice as much per ton per mile as on inter-state freight, you would use the multiple of six?

A. Per ton mile.

Q. Take the example I gave you, of $1,000,000 in revenue being received from the handling of state freight, and $6,000,000 being derived from the handling of inter-state freight: now the expense of producing that five million dollars of revenue was four million dollars?

A. Yes.

Q. Now, if the one million dollars revenue upon state freight was produced by the handling of proportionately one-half as
806 many tons as the four million dollars was produced by handling, then you would take six times the expense for the producing of that, six times the proportion of the four million dollars, that you would take if the revenue was the same?

A. Yes.

Q. But if the average rate per ton per mile was the same upon the state traffic as upon the inter-state traffic, then you would say that the expense of producing a dollar in revenue in the state traffic as compared with the producing of a dollar in revenue, was three times as great?

A. No, either you have that wrong or I have it wrong. I say if you take one million dollars as the revenue from the local business, I would use the multiple three as indicating that it costs three times as much to do that one million dollars of local business as to do a million dollars of through business. If you are coming down to the ton mile basis, where the rates would be exactly the same per ton mile for the local and for the through business I should say the multiple should be six. I understood you to put it just the other way.

Q. Assuming the multiple of three was upon the theory that the rates upon the state business were twice as high——

A. Much higher. I do not have the figure in mind.

Q. You must, necessarily, have assumed it was two, in order to reduce it one-half?

807 A. I did assume it was approximately twice——

Q. Assuming the revenue per mile was the same in the one million dollars state earnigns as compared with the four million dollars inter-state earnings, then give me the figures that you would apportion of the four million dollars expenses to the earnings of that one million dollars state business?

A. If I understand your question, if the rates are exactly the same on the local as on the through business?

Q. Yes?

A. Then my judgment would be what I have already testified, in that case you would have to use a multiple somewhere around six.

Q. I ask you what proportion of the four million dollars you would assign as the expense of earning the one million dollars?

A. I don't know as I can figure that out.

Mr. HAGERMAN: You could not figure it out without the number of tons, could you?

Judge SPENCER: You were talking about a revenue basis on equal cost?

Gen. HADLEY: I was assuming a revenue of one million dollars in state rates as compared with four million dollars of expenses; and four million dollars on inter-state business, the rates per ton per mile being the same.

A. How far do you haul your million tons?

Q. The same distance and the same service.

A. Then it would not be the same class of business.

808 Q. I do not mean the same service. The same average per ton per mile.

A. How far do you haul your local business?

—. I don't know where to start.

Q. If you think the expense of earning a dollar in your state business is six times greater than the expense of earning a dollar in your inter-state business, can't you apportion in that example the four million dollars of the expense of the doing of the freight business between the two classes?

A. I do not know the length of the haul.

Q. Would you have to know the length of the haul to apportion the expense?

A. Yes.

Q. Why?

A. In order to get the approximate expense to haul each ton ten miles the expense would be very different than if you hauled it all one hundred miles.

Q. If the earnings upon state and inter-state freight were five million dollars, and the earnings upon state freight were one million dollars, the earnings upon inter-state freight being four million dollars, and the same revenue being received by the Company, the average per ton per mile hauled in the two classes of freight, and the expense of doing the business was four million dollars, then it would result in the inter-state business being carried at an expense of — dollars and the inter-state business being carried at 240 per cent of the earnings?

809 A. It depends entirely on what your local haul was. If you hauled all your local business one mile, you would have one set of expenses, and if you hauled it all one hundred miles you would have another.

Q. If you had one million dollar earnings upon state business and four million dollars upon inter-state business, and four million dollars of expenses to do the same class of business——

A. The way you put that these expenses would be divided in the same proportion.

Q. I have not finished my question: and you had four million dollars of expenses to do both classes of business, and the expense of earning a dollar in state business was the same as earning a dollar in inter-state business, and the rate per ton per mile in state business was the same as in inter-state business, then you would take twenty per cent of the $400,000 as the expense of doing the state business?

A. Yes.

Q. Now if the expense of earning a dollar in the inter-state business was one-sixth of the expense of earning a dollar in the state business, you would take 240 per cent, wouldn't you, as the expense of producing a dollar in state traffic?

A. I do not follow it that way.

Q. I understood you to say that when you took the multiple of six as indicating the additional cost of doing state business
810 as compared with inter-state business, you assumed that the revenue produced by a ton per mile in state business was the same as the revenue produced per ton per mile in inter-state business: did I understand you correctly?

A. Yes.

Q. Now I ask you to give the per cent of expenses to earnings in state business, and the percentage of earnings to expenses on inter-state business, upon that theory.

A. I think you would have to give me the facts as to the distance of each individual haul, before I could make any reply to that.

Q. I understood you were dividing it upon revenue?

A. I am not. Your example now is cutting out the revenue and you are taking it purely upon a tonnage basis, and when you come to a tonnage basis you must give us the length of haul in each case. We figured it by revenue, by using the multiple of three.

Q. Well, apportion the expenses upon the theory that a ton of freight hauled in intra-state traffic produces twice as much revenue as a ton of freight hauled in inter-state traffic; apportion the four million dollars in state and inter-state traffic upon that basis.

A. I say, in a general way, it is going to be between three and six. In some cases more and in some cases less.

Q. Can you apportion from those figures given, namely, the earnings upon state freight, the earnings upon inter-state freight,
811 and the expense of conducting both classes of freight, can you give with that data the expense that you think should be assigned to the earnings of the one million dollars of state freight out of the four million dollars of expenses?

A. I can give you only my opinion. It is going to cost, as I have given before, in the relation of approximately three-sevenths to four-sevenths.

Q. Please figure that out. I want your amount and I want your percentage of expenses to revenue.

Mr. HAGERMAN: That is on the basis of revenue?

Gen. HADLEY: Both.

A. It is approximately one million seven hundred thousand dollars.

Q. That is, it costs 171 per cent to earn a dollar in revenue?

A. Yes.

Q. And it costs 57 per cent to earn a dollar in revenue in inter-state business?

A. Yes.

Q. Now take it upon the basis of six times the expense?

A. That would be 240 and 40.

Q. You think, Mr. Elliott, that upon the basis of the rate charged for state as compared with inter-state business it is necessary for the Burlington Railroad to spend $2.40 to produce a dollar in revenue in its state business?

A. According to those figures, that is the way it figures out. I have said that I thought the local business, costs, in a great
812 many cases, a great deal more than the revenue derived from it. And by and large it costs three times. But a light branch costs six times and a main branch——

Q. We are not talking about local freight, but state freight.

A. I used "local" and "state" interchangeably.

Q. In this case you are giving?

A. Yes.

Q. Do you know of any inter-state business or do you know of any average earnings in inter-state business for a period of one year, where the expense to revenue was on the basis of 40 per cent?

A. Do I know of any?

Q. Yes?

A. In the Burlington territory?

Q. For a period of one year in the State of Missouri?

A. No, I cannot say I do.

Q. When you figure that out, don't you think you have assigned altogether too much expense to the producing of revenue in state business?

A. I don't believe so.

Q. Do you still maintain you have to have the number of miles hauled in order to make an apportionment of this?

A. I think to make an accurate answer, in order to get your terminal expenses. If all the transactions were the ton mile proposition it is simpler than if they were 200 miles.

Q. What is your idea of the average haul of the state busi-
813 ness as compared with the average haul of inter-state business, in the state of Missouri?

A. I do not know. I have not the figures.

Q. You have not a knowledge of that element of expense? Have you on the Burlington System?

A. I should say on the System, the long haul, a great deal of the long haul business, goes through four and five hundred miles.

Q. Is it your idea that the difference of expense in doing state as compared with inter-state business is based upon your idea of the entire System?

A. No, sir, my general knowledge and ideas of doing general railroad business.

Q. Does that apply to the entire System or apply to any particular territory?

A. My knowledge applies to railroad business generally.

Q. You said that in your opinion it would cost three times as much to handle a car of freight in state business as it costs to handle a car of freight in inter-state business; was that based upon general inter-state business as compared with state business throughout the entire System, or is it applied entirely to the State of Missouri?

A. The basis would be the same in all states, practically. That is, the relative cost. It costs just as much more to do local business as compared with through business in Nebraska or in Ohio.

Q. Then your idea is that your Company is losing money
814 upon business done in every state?

A. I think on a large amount of local business the rates are so low that we are not making any money on it.

Q. Is that your idea that as a whole the Company loses money?

A. No.

Q. You think it earns money?

A. Naturally. The annual report sheet shows it earns money.

Q. Then there is not any such proportion as 240 per cent of expenses to income, or you would bankrupt the road?

A. Exactly. That was an extreme figure. I said three to six.

Q. I understood you to say you took six when you calculated double the revenue of state as compared with inter-state business. That is, the general computation is that the average rate per ton per mile is twice as large upon local as upon inter-state shipments?

A. I cannot say whether it is that much or not.

Q. You think it is that much in Missouri?

A. Yes.

Q. And consequently you assign six times the expense of earning a dollar in state as you do to earning a dollar in inter-state business?

A. What is that?

Q. That is, by reason of the fact that you think a ton of
815 freight in state business produces twice as much revenue as a ton of freight in inter-state business, you take your multiple of six?

A. Yes.

Q. And if the same rate per ton per mile existed, you would take three?

Judge SPENCER: That is not what the witness has stated.

Gen. HADLEY: I understood him to state so.

Judge SPENCER: He said when he took three he included revenue on local business.

Mr. HAGERMAN: He has said twenty times, if he has said once, that he only assumed that they received twice as much, in stating the assumption that Gen. Hadley made. That he did not have the figures.

Gen. HADLEY: I may have mis-spoke myself, that is all.

The WITNESS: Are you waiting for me?

Q. Yes, I want that clear, what you mean by that.
A. Say it again.
Q. Whether you apportioned three times as much of the expense of doing all the freight business to the earning of a dollar in state business, when you assume the revenue is the same, or when you assume that the revenue is double?
A. When I assumed the revenue was double, I took three times.
Q. And where you assume the revenue was the same you took six times?
816 A. Yes I took six.

The hour of 5 o'clock having arrived, the further hearing of testimony herein is adjourned until Wednesday October 24, 1906, at 10 o'clock A. M.

817 CHICAGO, WEDNESDAY, *October* 24, 1906.

Met pursuant to adjournment as above in the City of Chicago, Illinois, on Wednesday, October 24, 1906, at No. 209 Adams Street.
Present: Hon. F. L. Schofield, Special Master.
Present: Messrs. Hadley, Lake and Kennish in behalf of the State. Mr. Frank B. Hagerman appeared in behalf of the Railroad Companies.
The following proceedings were had:
Gen. HADLEY: Before beginning I wish to mention a certain matter. I was not here the closing half day of the hearing before, but from reading the record I thought it was thoroughly understood between counsel and the Master that the way bills for the month of September would be submitted to the experts employed by the State, as soon as they were secured.
Mr. Fisher tells me that the representatives of the Burlington have declined to let him see either those papers or any other papers, unless they have an order of Court to that effect.
I mention the matter, so that if Mr. Fisher has misunderstood it, the matter may be corrected, and if there is not any misunderstanding, I appeal to the Master for such order in the premises as is necessary to secure us the papers.
The MASTER: Confer with counsel on the other side.
Judge SPENCER: There is not any misunderstanding, and there will not be any. We will make that satisfactory to you at the proper time. The discussion was, whether we would get informa-
818 tion for the other side at this stage in the trial, and at this time, after we had given everything we could suppose they wanted, and after they had had access to all our records they then thought they would like to have certain way bills. We thought we had then done all the gratuitous service we wanted to do for the other side. But we have not at any time announced that we had any record we would not gladly submit to them or let them examine, when it would not interfere with the work of our office. They need no order of Court to see a thing.

Gen. HADLEY: I want to disclaim that we asked for any gratuitous information. It is for the benefit of the Master and the Court and all of us.

The MASTER: It is not worth while that these matters should be brought before The Master at all, unless you find yourselves unable to agree among yourselves.

Judge SPENCER: Mr. Fisher has occasionally made requests of Mr. Sturgis, for certain figures and of course we do not want to deny Mr. Fisher anything we can furnish him but we would like that those requests should be made through counsel, on the record, so we may know what we have to furnish. If a memorandum is handed to Mr. Sturgis by Mr. Fisher, we do not know whether it is what you desire or not.

Gen. HADLEY: In response to Judge Spencer's suggestion, I will now indicate, as it has been indicated before, that we not only desire, but earnestly desire, the privilege of examination of any and all way bills showing business done by the Burlington in any
819 period, to be submitted to Mr. Fisher to examine them. Is that sufficiently definite?

Judge SPENCER: Yes.

820 DANIEL WILLARD, a witness of lawful age, being duly produced, sworn and examined on the part of the State, testified as follows:

Direct examination by Judge SPENCER:

Q. Will you state your name and position, Mr. Willard?

A. My name is Daniel Willard. My position is Second Vice-President of the C. B. & Q. Railway Company.

Q. Will you state briefly your connection with railroad work, Mr. Willard, from the beginning.

A. Since January 1, 1904, I have held my present position of Second Vice-President of the Burlington Railway Company. Previous to that time, between 1901 and 1904 I held the positions of Assistant to the President of the Erie Railroad; afterwards Third Vice-President of the same Company, afterwards General Manager and First Vice-President. Between 1899 and 1901 I was Assistant General Manager and Acting General Manager of the Baltimore & Ohio Railroad Company. Previous to 1899 and subsequent to 1883, I was freight train conductor, locomotive engineer, Train Master, and Superintendent of the so-called Soo Line—shall I go on beyond that?

Q. No, I simply want to qualify you as an expert.

Q. What are the duties of your present position, Mr. Willard, whether it refers to operating, I mean?

A. Subordinate to the President of the Burlington, I have charge of operating and maintenance.

Q. Of the entire Burlington system?

A. Yes.

821 Q. Including the Missouri Lines?

A. Yes.

Q. The question under investigation here is the relative cost of what is known as "state business" which we have heretofore designated as local freight business, and the cost of inter-state freight business; inter-state business is composed of freight that originates outside of Missouri and passes through Missouri to some other point outside of Missouri; also freight that originates at a point outside of Missouri destined to a point in Missouri; and freight originating in Missouri at some point, and destined to some point outside of Missouri. These are included in the inter-state freight. The freight that I shall designate as "local freight" is freight that has its origin and destination in the State of Missouri.

Judge SPENCER (to Gen. Hadley): If you care to have that called state freight I shall be glad to designate it hereafter as state freight.

Gen. HADLEY: You neglected to include one kind of freight; that is, freight that originates in Missouri, bound for a point in Missouri, that goes out of Missouri in shipments.

The MASTER: It passes out of Missouri en route, from one point to another in Missouri.

Mr. HAGERMAN: I don't know of any place on the Burlington System where that would be a possibility.

Judge SPENCER:

Q. Mr. Willard, have your duties as Vice-President of the
822 System been such as to enable you to give an opinion on the relative cost of this business, this state and inter-state business?

A. I rather think so. I have an opinion, at any rate.

Q. Will you please state whether it costs more to do the local business, and if so, how much more?

A. In my opinion the cost of doing the local business, as you have described it, would be none less than three times as much as the doing of the other business you have mentioned, and it probably would be more than that. I do not hesitate to say that in my opinion it is not less than three times.

Q. Give some or all of the reasons upon which you base that opinion.

A. With special reference to the State of Missouri, I think this is true: The Burlington Railroad in that State was clearly originally intended for local business. There was no through business passing from outside the State to points through the State, in any great quantities, when it was built. The Road as it is now built was primarily built to take care of local business and the facilities built originally, and which are in use now, are practically all necessary for the performance of this local business, even if there were no through business. The side tracks in the State of Missouri which are used wholly for business from one point to another in the State, or from a point in the State to some point out—those facilities, side tracks and buildings, which are provided for local business in the

State from one point to another and which are used by business going outside the State, but not business passing through
823 the State, constitute approximately 26 per cent of our business in Missouri; and the cost of maintenance should be charged wholly to the carrying on of the local business.

The expense for agents, freight houses, freight house handlers, is largely increased because of the local business which is done over what would be required if simply a through business was being handled, because of the nature of the business and the character of the service necessary to perform it.

The way freight trains which are run primarily for the handling of the local business, make fewer miles per day, run fewer miles per day, haul much lighter trains than is the case with trains handling through business, and on that account the cost of doing local business is greater than the cost of doing through business.

The men who run the engine and trains on local business get higher wages proportionately than the men on through business, and that adds to the price.

The liability to injury of trainmen is greater on the way freights than it is on through freights, because of the increased amount of switching done at stations.

As I have said before, the wear, the maintenance, and the entire cost of a large proportion of the local facilities, should in my opinion properly all be charged to the local freight business handled.

824 Then this further thought appeals to me: That if we should give up entirely all the through business, business originating out of Missouri and passing entirely through the State to some point out of Missouri, but if that business should be given up entirely, it would have very little effect on the facilities required to do the business remaining, which would be entirely state business, as I understand your question, and business originating in the State and going out, and making use of the facilities.

These are some of the principal reasons which cause me to have the opinion which I have.

Q. The Attorney General asked Mr. Elliott yesterday about the abandonment of local trains, where there was not sufficient local business: it is not a custom at all to abandon local freight trains, is it Mr. Willard; they run whether they are lightly or heavily loaded?

A. Yes, sir. It is only in very rare instances that local freight trains can be abandoned at all. It is the almost universal practice to run them whether they have much or little business to handle.

Q. Which is the heavier loaded, the local freight trains or the through trains?

A. In the State of Missouri the way freight trains handle less than one half the tonnage that is handled by the through freight trains.

Q. And it is practically as expensive to handle a train half loaded as it would be to handle a train loaded to its full capacity?

825 A. More in this instance, on account of the extra switching done and there is no saving in coal at all, and the higher rate of wages paid to train men on those trains.

Q. Would you include in the ratio of three times the cost of the expenses incident to operating the trains, such as the supply to stations and engines, and the engine train service, and every expense of that character?

A. I do not know that the ratio of one to three would obtain all the way through. But of course in getting at the results of one to three I had that in mind. Some expenses incident to local expenses would be 100 per cent, as applied to through service. On some there would be very little difference. But the sum total of it, all would be that it costs three times as much.

Cross-examination by Gen. HADLEY:

Q. I understand you to say that you are now in charge of the Operating Department of the Burlington System?

A. Yes.

Q. Just what duty does that impose upon you, or what do you do in that capacity?

A. I am expected to see that the property is properly maintained and that the trains are properly and economically run and that the business is carried on in a proper and prudent manner. I am expected to do those things.

Q. If I correctly understand the railroad terms, you are the official in charge of the conducting of transportation in a way to make the least expense and the greatest revenue to the Company?

826 A. Perhaps that is right. I am the official to do that.

Q. And in accomplishing that purpose what are the main elements to be regarded in producing the largest revenue and the least expense in the conduct of your freight business?

A. As I understand your question I think the proper answer would be, perhaps one of the principal elements would be, inasmuch as a train mile is perhaps the unit of cost, to have the train mile, to try and keep the cost of the train mile as low as prudent with good operation, and have it as effective as possible. That is, have as heavy a train load as possible at as low a cost as possible.

Q. That is, one of the principal elements to be considered is the matter of having an engine going a certain distance carry as many cars as it can carry, loaded to their full capacity?

A. I think that is correct. It is not perhaps the way I should state it, but I think that is correct.

Q. Making allowances for the artificiality of my expression, that is perhaps right?

A. That is perhaps right.

Q. In your knowledge of the operation of the road, necessary to accomplish the proper results, you are of course familiar with the kind of freight trains and the kind of passenger trains that are operated, aren't you?

A. Yes.

827 Q. What are the classes of freight trains that your Company operate in Missouri?

A. We have what we designate as through trains and local and way trains; those are the two general classes.

Q. Is the designation of way freight and local freight trains synonymous?

A. Yes.

Q. What, exactly, do you mean by through freight?

A. Perhaps that term is used very broadly; but generally it is applied to trains that start from a terminal, and the hope to start it with a full train. Those are trains that we do not feel called upon to run unless they are full trains. In that way they differ from way freight trains. That is a term that is used for a train that starts out substantially from its origin with a full train and runs to its destination with a full train.

Q. Would the destination be the next terminal?

A. The destination of the engine and the trainmen probably would be.

Q. Isn't it generally regarded in railroad business that through freight trains run from one division point to another division point?

A. Yes I rather think it is.

Q. As I understand you what you call through freight trains that operate between ends of divisions are not run unless you have freight which will make it profitable to operate that train?

A. Not as a matter of general practice.

828 Q. What is the general practice, is what I want to get at.

A. I think I have just said, that the general practice is not to run those trains unless there is a full train.

Q. That is what I asked you. You doubtless misunderstood my question. Then a through freight train which is scheduled to leave Hannibal for Brookfield would not be run by the Company unless there was sufficient freight to operate the train?

A. Not necessarily so and probably it would not be.

Q. I mean in the general course of business it would not be done?

A. That is right.

Q. The freight that would have gone by this through freight train from Hannibal to Brookfield would be carried by the local freight train?

A. Not necessarily.

Q. Would it wait over until a through freight train was to run?

A. Very likely it would, because usually the through freight trains start out with cars to be dropped at certain points, cars having small shipments to be unloaded at various places, empties to be left at various places for loading, and with not less than a train with full capacity, so that the engine can take on such loads as might be ready for it, as it goes on. That is all a matter of knowledge of the Train Despatcher, and he arranges his train accordingly.

Q. Are you speaking of through freight?

A. Of way freight.

829 Q. Then you mis-quote yourself.

A. You asked if the business when the through freight train did not run, would be taken by the way freight.

Q. If the through freight was abandoned?

A. I meant to say it would not and state reasons why it would not.

Q. Suppose there were two cars at Hannibal bound to a point west of Brookfield, and that was all the freight there was bound that far: would that be handled by the way freight trains running between Hannibal and Brookfield, or would it be left over until there was sufficient freight to make up a train of through freight?

A. Very likely it would be left over.

Q. That is, that is a matter that would vary according to the kind of freight?

A. Yes.

Q. You have described now the two kinds, and the only kinds, of freight trains that are operated in Missouri?

A. I cannot say the only kinds; but those embrace practically all the trains that are run in general business.

Q. Does not a local train run from one end of a division to another——

A. It runs——

Q. Pardon me, but I have not finished my question. And are not those divisions the same division points that the through trains operate between?

A. Not in many cases. In many cases the way freight
830 trains are not able to make the same number of miles that the through trains make.

Q. How is it in Missouri?

A. What I say applies to Missouri.

Q. Is not from St. Louis to Hannibal both a way and through freight division?

A. Yes.

Q. And is not Hannibal to Brookfield a way freight division?

A. I think it is.

Q. And is not Brookfield to Cameron a way freight division?

A. I am inclined to think so, but I do not know.

Q. And is not Brookfield to St. Joe both a through freight and a way freight division?

A. I think it is.

Q. And is not St. Joe to Kansas City a way freight and through freight division?

A. It is and it is not. The through freight from St. Joe to Kansas City goes down and back in a day, and the way freight goes only one way.

Q. The way freight is for a day's trip?

A. It is in that instance.

Q. And from Kansas City to Cameron is that both way freight and through freight division?

A. No, sir, we would not have a through freight division
831 between those points. I will say that is a matter dependant upon the business. There might be times in the year, but I doubt it would be the practice the greater portion of the year, when the way freight and the through freight would run the same distance, provided the divisions were not much over one hundred miles long, as is the case in Missouri. There would be also times when the way freight business is heavy, and that it is practical to run the way

freight half way on a division, and we do that during portions of the year when the way freight business is heavy. To what extent that is done in Missouri I am unable to say, except that is the practice generally over the whole System, but changes as the business requires.

Q. Are your headquarters in Missouri?

A. They are in this building.

Q. When you go to Missouri you naturally see the methods in which the business is handled?

A. Yes.

Q. What is the freight division, local and through, north from St. Joe, in Missouri?

A. I think some of the through trains run to Council Bluffs, and some probably to Pacific Junction. I cannot answer that.

Q. On those lines we have designated as the north and south lines of the Burlington Ssytem in Missouri, do any through freights run on those lines?

A. I do not know what lines you have so designated.

Q. I will designate them by the stations between which they run: Here is a line which runs from Bigelow up to Villisca,
832 Iowa. One that runs from Corning, Missouri, to Clarinda, Iowa; one that runs from Amazonia, Missouri to Cumberland, Iowa.

A. That last one you mention is not operated as a continuous line.

Q. I was not intending to ask that point. But describe the rest of those and generally ask the general questions. You mean lines running from St. Joe to Indianola, Iowa, from Carleton, Missouri to Sedan, Iowa, from Mercer to Sioux City, Iowa—all I have mentioned you would call branch lines, wouldn't you?

A. I think so.

Q. They could be fairly described as that?

A. Yes, sir.

Q. Do what you call through freight trains operate on any of those branch lines?

A. I cannot say from my definite knowledge now that they do, but I think not.

Q. That would be your idea?

A. Yes.

Q. Take it upon that part of the Burlington which was formerly the St. Louis, Keokuk & Northwestern, running from St. Louis up along the Mississippi to Iowa, passing at Keokuk?

A. Yes.

Q. What is the freight division from Hannibal north on that line?

A. Burlington.

833 Q. Burlington, Iowa?

A. Yes.

Q. Through freight trains run on that division, do they?

A. Yes.

Q. And do local freight trains run on that division?

A. Yes, without doubt.

Q. Now I see a line marked there (indicating map) running from Quincy down to Kansas City?

A. Yes.

Q. What is that?

A. That folder is put out by the Passenger Department and is not intended to illustrate freight divisions. I do not think we run any freight trains at all from Quincy to St. Louis. We operate freight trains from Hannibal to St. Louis.

Q. But from Quincy to Kansas City was that what was known as the Q. O. & K. C.?

A. I am not an official of that line.

Q. It is indicated there as part of the Burlington System?

A. That is simply a passenger folder, which is intended for the instruction of the public.

Q. You do not know anything about freight divisions on that road?

A. I am not an official of that road.

Q. All the freight, then, that would be handled on these
834 north and south branch lines I have been asking you about, would of course be handled by what you have classified as local freight trains?

A. I think so.

Q. And that without reference to business originating in Iowa and ending in Missouri or originating and ending in Missouri?

A. Very likely.

Q. You have made this designation of local freight trains and through freight trains, which is both a railroad term and also a term of general designation, isn't it?

A. Yes.

Q. In railroad parlance local freight means freight carried on a local freight train, doesn't it?

A. Undoubtedly that is true.

Q. And through freight means freight carried on a through freight train?

A. I do not know that that would be true. The fact that freight was carried on a through freight train would not necessarily imply it was through freight, but perhaps generally it would be the case.

Q. I am not undertaking to make any distinction between interstate and state freight.

A. I don't know what you are trying to get at and am trying to be definite in my answers.

Q. Describe, as classified by a railroad man, what they mean.

A. Generally, local and through freight.

835 Q. That is the designation they understand in the conduct of their business?

A. Yes, that covers practically all the business.

Q. We are investigating the question here as to whether certain rates fixed by the Legislature in Missouri furnish a reasonable compensation to the Road, on freight carried wholly in the State; and that has resulted in a comparison of the expense of doing business

done wholly in the State as compared with the expense of doing that which is known as inter-state freight.

A. Yes.

Q. You would not say that state freight was handled only on local freight trains and that inter-state freight was handled only on through freight trains?

A. No, sir.

Q. Local trains carry inter-state freight and through freight trains carry inter-state freight?

A. They might.

Q. They do, don't they?

A. I cannot make absolutely a statement under oath, if I have no means of knowing absolutely. But I should say probably they do.

Q. If a merchant in St. Joe should ship a carload of groceries to a man in Brookfield, how would that freight be carried?

A. It might be carried on the local train and it might be carried on the through train.

836 Q. What would be the probability in the ordinary course of railroad operation?

A. I do not think that question can be answered. It would depend wholly upon circumstances. Perhaps it would be as likely to go in one train as the other.

Q. What circumstances would you mention?

A. The relative importance of that shipment as compared with other shipments, and the number of trains that were being run that day.

Q. Is not one of the most important elements in the conducting of freight business of the railroads, including the Burlington under your direction, not only to get the largest capacity behind the engine, but also to get the prompt movement of freight?

A. Yes, sir.

Q. And to secure prompt movement of freight you would put this freight upon the train that ran at the most rapid rate between those points, wouldn't you?

A. They might.

Q. That would be the ordinary course of operation with freight bound from the end of that division, in the ordinary course of business, it would go on the through freight trains?

A. I have said, ordinarily I think it would.

Q. That is all I want.

A. Perhaps I have not made myself clear. Very likely it would go on such a train as you speak of. The fact that it might

837 not go there is perhaps illustrated in this way: It might be supposed that a train that might leave St. Joe for Brookfield, that train might have a full load of important freight that went clear across the State of Missouri. It might not be possible to take the car for Brookfield on that train and in that event it might go on the local freight.

Q. Or wait until the next day and go on the through freight?

A. It might.

Q. And in your opinion probably it would be hauled on a through freight train?

A. It might not but it probably would be.

Q. And that would be state freight that would be through freight?

A. Yes, in that instance.

Q. It is true that in the consideration of the freight business, you reckon with this proposition; that freight moves to and from commercial centers?

A. Yes, to some extent.

Q. Is not that the general source of commercial operation in the State of Missouri?

A. I do not think so. Perhaps there is more freight—understand, I am giving only my opinion, because I have no figures—but I would say that the kind of freight you have under consideration probably moves in larger volumes from commercial center to commercial center than perhaps to smaller places.

838 Q. That is what I asked you.

A. I understood you to say from commercial centers.

Q. To and from?

A. I perhaps did not know what you meant by commercial centers

Q. You would call the commercial centers of Missouri such towns as St. Louis, Hannibal, Kansas City and St. Joseph?

A. That is what I understood you to mean. That does not apply to my answer.

Q. The principal movement of freight by the Burlington System is that which goes from small points within the state to St. Joseph or Kansas City or Hannibal or St. Louis, and those shipments that go from those commercial centers to small points in the State?

A. Very likely that is true. I have no positive knowledge about that.

Q. Is not that your idea as a railroad man, from your knowledge as to how freight, which is the source and substance of commercial operation, is usually conducted?

A. I am unable to say whether the aggregate amount of the freight handled from St. Joseph to all other points in the State is more than the aggregate amount of freight handled between all other points and themselves. Probably more freight is handled from St. Joseph, and the other large cities you have mentioned, very much more, than the majority of the small places in the State. But the relative volume I do not know.

839 Q. It would naturally follow that the merchant buys his groceries, from the large commercial centers where these things are kept for sale?

A. It would follow he would buy them naturally from the commercial centers, but there is a large volume of way freight handled from one station to another station; things that never go into the large commercial centers at all.

Q. The farmer who has a carload of wheat to sell or has a carload of stock to sell, naturally sends that to the market that is best for his product?

A. Yes.

Q. And that naturally takes it to Kansas City, St. Joe or St. Louis?

A. Yes.

Q. And while there is always an interchange of freight going on between small dealers in smaller towns, in the state, the great bulk of business is that which goes from large commercial centers out to the small towns; and goes from the agricultural districts to the large centers?

A. I am not prepared to say that is so.

Q. Are you prepared to deny the correctness of the proposition stated?

A. I don't know whether it is so or not, or how I can find out. I know there is a large shipment of sewer pipe to places within the State to other small places, and yet none of these would be classed as large commercial centers. There is also large shipments of
840 brick, sand and household goods that never go to the large centers at all.

A. Take the example you gave, is not there a very large sewer pipe factory in Kansas City and another large one in St. Louis?

A. Yes, undoubtedly.

Q. And aren't those one hundred times the capacity of any such industries in Missouri, on the Burlington Line?

A. I don't know. I cannot answer that question.

Q. Take a shipment which originates east of Brookfield and bound for St. Joe, in the ordinary course of events, under ordinary conditions, how would that car of wheat or corn be handled?

A. Undoubtedly we would try to handle it in a through train from Brookfield to St. Joe.

Q. And on that portion of the shipment it would be through freight?

A. Undoubtedly it would be handled that way.

Q. Suppose a shipment of freight originated between Brookfield and St. Joe, bound for St. Louis, in the ordinary course of events how would you handle that shipment?

A. From Hannibal to St. Louis in the through train, I think.

Q. And from the small points to Hannibal, probably on the local freight train?

A. Yes.

Q. And if the shipment was bound for Chicago, a shipment originating between Hannibal and Brookfield, it would be handled
841 from the small points to Hannibal by the local train, and from there on to Chicago by the through train?

A. Very likely.

Q. That would be the ordinary and customary mode of operation?

A. I think so.

Q. So there is no difference in service, according to whether the freight is bound for a point within the state or bound to a point without the state?

A. I do not understand that question.

Q. There is no difference in service by reason of the fact that freight is state or inter-state?

A. Yes, I have said that I thought there was a difference. I think there is a difference.

Q. You do not understand my question.

A. I am afraid not.

Q. You have just stated that freight which is bound for a division point east or south of Hannibal, which originates at a small point west or north of Hannibal would be carried to Hannibal by the local freight?

A. Yes.

Q. And carried on from there in the through freight train?

A. Yes.

Q. That would be handled in exactly the same way if it was bound for St. Joe or Chicago, from Hannibal?

A. I do not understand your question clearly, yet.

Q. Aren't you able to say whether a carload of freight which would originate at a little station, say Monroe City,
842 west of Hannibal, would be carried to Hannibal on the local train, if bound for St. Louis?

A. Yes.

Q. And carried from Hannibal to St. Louis on the through freight train?

A. Yes.

Q. And if bound for Chicago it would be carried to Hannibal on the local freight train?

A. Yes.

Q. And from Hannibal north to the next division point on a through freight train?

A. Yes.

Q. Now the fact that these two shipments, the one was bound for a point outside of Missouri and the other was destined to a point inside of Missouri, would not make a bit of difference in the way you handle it?

A. No, sir. So far as that is concerned there would be no difference.

Q. In other words, you handle freight in such a way as will give you the least cost and the greatest transportation?

A. That is what we try to do.

Q. Without reference to its destination?

A. Yes, we try to.

Q. Or without reference to its origin?

A. Yes, we try to.

Q. So your through freight trains are operated with the idea of making as few stops as possible between points?

A. Yes.

843 Q. Do they, as a general thing, make stops between division points?

A. As a general thing they do.

Q. What occasions that?

A. They have to stop for coal and water and to meet trains.

Q. Do they usually stop to take on or put off freight?

A. I cannot say but they do stop to get coal and water and to meet trains.

Q. But so far as you can you endeavor to have that work done by the local trains?

A. Yes.

Q. It is true, then, isn't it, that all of the freight originating between division points, upon the line of the Burlington System in the State of Missouri, and bound to a point outside of Missouri, and beyond the next division point, you endeavor to handle freight like that from its point of origin to its first division point, by the local freight trains?

A. That, I should say, is the general practice.

Q. So, unless you did have local freight trains to perform that service, ancillary to what you call through business, and in this illustration inter-state business, the through trains would have to make those stops and pick them up themselves?

844 A. I hardly think that is a proper question, because you have assumed something that is not so.

Q. What?

A. You have assumed that we would have no local trains and therefore it does not necessitate it. But if such a state of affairs did exist as you mention, under the working schedule we have with our trainmen, when a through freight stops and does such work, then we are obliged to pay them a higher rate of wages, and if they must pick up loads they must necessarily have less than full trains and then they cannot be called through trains.

Q. If you had only one class of trains, they would have to do all kinds of work?

A. But you have assumed that as through freight, and that cannot be.

Q. I understood you to characterize through as one that ran from division point to division point with as few stops as possible.

A. Yes.

Q. And in order to have few stops you have to have a second class of service to perform the service for the through freight?

A. Yes.

Q. And that is performed without reference to whether the freight is bound for outside or inside the State?

A. Possibly that is so, but I should not say that service is performed for the through freight, because it has no relation to

845 the through freight. The local freight is run for a particular service, to perform service for the local stations.

Q. And that service for the local is service which consists of handling freight between those stations and also carrying the freight from small stations to the division points?

A. Yes, sir.

Q. And the converse is also true, that this local freight train distributes the freight which is local, brought from the division points by the through freight trains?

A. Yes.

Q. To illustrate, if a merchant in Hannibal sold a carload of groceries to a dealer in a small town west of Brookfield and east of Cameron, in the ordinary course of business how would that car of groceries be handled?

A. As you have mentioned, and as I have said, I think ordinarily it would be handled in the through train to Brookfield and in the local train from Brookfield to the point of destination.

Q. And if this merchant in the small town in Missouri had been so unpatriotic as to purchase his goods in Chicago, how would it be handled?

A. In the same way.

Q. It would be carried to Brookfield on the through train and then distributed from there on the local freight train?

A. I think so.

846 Q. Then it does appear, doesn't it, that what we classify as state and inter-state freight in this case, which Judge Spencer has described to you correctly, that both classes of freight are carried upon both classes of trains?

A. They might be.

Q. Don't you feel, in view of what you have stated, and in view of the fact, that you can state it as a fact that they are?

A. They probably are, yes.

Q. How could you determine the percentage of what would be freight originating and ending wholly in the State of Missouri that is carried by the through freight trains?

A. I cannot determine that. I do not know.

Q. Would not the way bills show?

A. I suppose so.

Q. And the conductor's report?

A. I suppose it might be gotten at, but it is a class of information that would be absolutely of no use to the railroad officials, and is a class of information that has never been tabulated, so far as I know.

Q. You have stated, I think I took your language correctly, that the cost of doing the local business is not less thn three times the cost of doing all other business?

A. Yes.

Q. What do you mean by that?

A. I do not know how I can state it any more clearly than I did.

847 The MASTER:

Q. You mean all other freight business?

A. I spoke of freight business only.

Gen. HADLDEY:

Q. I did not catch the word freight.

A. I assumed we were talking about freight wholly.

Q. You mean freight business.

A. Yes.

Q. And you mean that the cost of doing the local business is not less than the cost of doing all other business.

A. All other freight business.

Q. Do I understand what you mean by that? Do you mean if it cost the Company fifteen dollars to carry a car of twenty thousand pounds fifty miles by the local freight train, and cost it five dollars to carry it the same distance by the through freight train, that that would be an example of the three-fold ratio you have indicated?

A. Using my own words, I want to say this: that adopting any unit of measure which you may see fit to do,—I think you have adopted the ton mile basis, as I understand?

Q. I am using it here.

A. It costs, in my opinion, three times as much on this basis, for the handling of purely state business, having in mind all the expenses incident to that business, as it costs to do all the remaining freight business in Missouri.

Q. So you have stated previously, but I asked you if the example I have given you was a concrete example of what you meant by that statement.

A. I presume that is your idea of what I have said.

848 Q. I asked you if that is the idea that you intended to convey.

A. I do not know what your reason is for asking that, but to me my answer is clearer than yours.

Q. Assuming I have no sinister purpose in asking the question, but ask it only for the purpose of information, does that furnish a concrete example of your ratio?

A. State it again.

Q. That if it costs the Company fifteen dollars to carry a twenty ton or a ten ton car fifty mile- on the local freight train, and if it cost it five dollars to carry the same car the same distance on a through freight train, and the expense of operating one car per ton per mile is fifteen dollars, and the cost of operating the other car per ton per mile the same distance is five dollars, does that furnish an example of your three-fold ratio?

A. Not at all.

Q. Give me then an example of what you mean by saying the local business costs three times as much as the doing of the other freight business.

A. I take it that you assume that the only difference incident to the two kinds of business is because of the fact that in the one case it is hauled in one train and in the other in another train.

Q. I was considering all the additional costs by reason of the different facilities that might be used in the handling of a

849 local freight train; all the elements of cost that go to the Company, incident to carrying a ton of freight a mile. I do not mean simply the physical operation of moving it over the track.

A. In that illustration you substitute fifteen to fifty in lieu of the one I state of three to one.

Q. Fifteen to five.

A. The mathematical ratio would be the same. I have no objection to substituting that if you wish.

Q. All the elements of expense to the Company being considered, would five dollars to move a car on the through freight train and fifteen dollars to move it on a local freight train be an example of the ratio you have in mind?

A. That is not the way I would put it.

Q. Give an example of what you mean by that illustration.

A. I repeat again, I think it costs three times as much to do the particular class of business we are talking about as the other class. It does not cost three times as much, because part of the time the business is done on the through, or part of the time on the local. That is only one element that makes it cost three times as much to do that as it costs to do the other business.

Q. We will come to that later, but I ask you if I have correctly stated an example of the three-fold ratio?

A. I don't think so.

Q. Will you give me one?

A. I will have to repeat the thing.

850 Q. I am asking for a concrete example.

A. I will say that a ton of freight originating in one point in Missouri and going to another point in Missouri, is what I have in mind when I speak of purely state freight. I think it costs three times as much to handle that kind of business as it does a ton of freight starting from some point out of Missouri and going through the State to some point out of Missouri, or starting from some point out of the State and coming into the State; or starting from some point in the State and going to some point out of the State. And when I say I think the ratio is as one to three I have in my mind all the elements that enter into the cost of that operation, and not simply the going a small way on the through freight, as you have stated.

Q. Would you say a car of freight originating in the State of Missouri and ending in the State of Missouri which was carried wholly upon a through freight train, would cost any more per ton per mile than one originating outside — State and ending in the State, carried wholly on the through freight car?

A. You are talking about car, and that is not the unit we are talking about.

Q. Answer the question in the form it is put.

A. I cannot.

Q. Put it on the ton per mile. Would a car of wheat originating in Missouri, two hundred miles from Kansas City, and carried to Kansas City wholly by a through freight train, cost the Com-

851 pany any more to carry it than it would cost them to carry a car of the same commodity two hundred miles from a point in Iowa to St. Joe, which was carried wholly by a through freight train?

A. Yes and no.

Q. Tell us how that is.

A. The actual hauling and handling of the cars, I will agree might be the same in each case. But in one case you have two terminal charges for that car in the State of Missouri, and in the

other case you have one terminal charge. And that would make the cost more to handle the car originating and ending in the State than the one that originated out of the State and came in.

Q. Let us figure upon that: Here is one shipment of two hundred miles, one half in Missouri and one half in Iowa. And here is a shipment two hundred miles altogether in Missouri. Suppose you get fifty dollars for carrying that car two hundred miles and suppose the terminal expenses upon each terminal handling was $2.50, making $5.00, then the total expense for each shipment would be $55.00, wouldn't it?

A. I don't think I followed that. I am sorry, but I don't think I followed you in that example.

Q. The rate on each car was $50. for the two hundred mile haul. The two terminals for each shipment being $2.50 at each end of the line, making the total cost or expense to the Company $55.

A. It seems to me you have added the revenue the Company received to the expense of the shipment.

852 Q. I said it cost the Company $50. to handle the shipment and $5.00 for the terminal charge.

A. I understood you to say the Company got $50.00.

Q. No, sir, I did not, and I purposely avoided saying that. If you are apportioning the shipment from Iowa to Missouri, how much of that haul in Missouri does the Company get?

A. I don't know.

Q. Doesn't it get this: You will have to deduct from the $55. which was the total expense of handling the inter-state shipment. $5. terminal expense, which would leave $50. to be apportioned over two hundred miles of road, and that would be 25 cents per mile?

A. If the case is as you put it that is probably true. But I have no knowledge of rates or anything about that.

Q. Assuming that is true. It would be the same whether it was $50. or a $100.00.

A. Assuming that what you say is true, probably the conclusion is true.

Q. In other words, it is true that when a shipment requires the use of two terminals, the Company charges for the use of two terminals?

A. Some Company undoubtedly does. One of the terminals might be with the Burlington Company and one might be with the other road. Or both might be on another road.

Q. I am assuming this is all on the Burlington, state and inter-
state. Wherever there are two terminals the Company is put
853 to the expense of two terminals, and endeavors to charge for two terminals?

A. Yes.

Q. And before you attempt to apportion the expense, you have the expense of the two terminals to be deducted from the entire shipments, if there are only two terminals in each shipment?

A. Undoubtedly.

Q. Then how can you say that for the same kind of service on the same kind of freight, that there is any difference in expense

to the Company by reason of the fact that one shipment might come from Iowa and the other begin and end in Missouri?

A. I am speaking of what happened in the State of Missouri.

Q. Certainly, but if there is only one expense in the State of Missouri, there is only one charge for that service in Missouri; isn't that clear?

A. That is what I said.

Q. Then for the same service on the same class of freight, can it make any difference in the expense to the Company, whether the shipment comes from Iowa into Missouri or originates and ends in Missouri?

A. Probably not, that way.

Q. Certainly.

A. But just a moment: you have just said that if there was only one terminal in the State of Missouri there was only one expense.

Q. And only one charge in the State of Missouri?

854 A. Yes, and that is why I contend it is cheaper in Missouri to handle that class of business in Missouri than business having two terminals in Missouri.

Q. I utterly fail to grasp how there can be a charge or expense to the Company for two terminals in the State of Missouri, when only one of the terminals is located there on an inter-state shipment?

A. Yes that is true on inter-state shipments, but as compared with the state shipments there are two terminals in Missouri.

Q. But in apportioning revenue between the two states, how would you apportion it, wouldn't you apportion it only on the basis of the terminals used in the State?

A. I have no knowledge about the revenue part of it. That I do not know.

Q. But if a car of freight originated on one end of a division outside of Missouri and ran to another end of a division in the State of Missouri, and another car of the same weight and the same commodity, originated in the State of Missouri at one terminal and ran to another terminal in Missouri, the same distance for that same service would there be any additional expense to the Company?

A. Probably not, all things being equal.

Q. You have mentioned here a number of items which went to make up the greater expense which you said contributed to this three-fold ratio of State expense.

A. Yes.

855 Q. Do you mean that the expense of earning a dollar in the state business is three times as great as the expense of earning a dollar in all of the freight business, or in the inter-state business, or either?

A. I think that is another way of saying what I did. I think that would follow.

Q. That is, Mr. Willard, if the cost of handling a shipment of state freight per ton per mile is the same as the cost of handling a car of inter-state freight, and assuming that the earnings of the Company or the revenue derived from the shipment, per ton per mile, is the same, then you would get the expense of conducting the state ship-

ments, by taking that per cent of the entire freight earnings which the state freight earnings bore to the entire freight earnings, wouldn't you?

A. In saying what I have about the relative cost of doing business, I have not had in mind at any time the revenue received from the business, because I know nothing about it. So when you speak of the relation of the earnings to revenue, I have no answer to make. I have no definite knowledge about it. You have assumed further that the cost of handling state freight business was the same as the cost of handling a car load of inter-state business, which in my opinion is not true, so I would not answer to that assumption.

Q. You are not familiar in any way with the revenue received or the rate charged?

A. No, sir.

856 Q. If I may be permitted to indulge in another assumption, which acknowledges the correctness of your statement, for the purposes of illustration: assuming that the average cost of handling state freight is proportionately three times greater than the cost of inter-state freight——

A. I did not say that all for freight.

Q. Put it all for freight. What do you mean by that?

A. All freight business there is except the purely state business.

Q. What is it?

A. State business passing through the state without any terminal charges, and business originating and ending in the state.

Q. That is inter-state freight?

A. There are two kinds of business. I will say, to illustrate my meaning——

The MASTER:

Q. There is no class of business except state and inter-state?

A. In arriving at my conclusion that it costs three times as much to do state business as all other kinds of business, I have had one other division in mind and will be glad to explain that if you will permit me:

I have had in mind business originating out of the State and passing entirely through the State to some other point beyond. I have had in mind business originating out of the State and

857 coming into the State. And business originating in the State and going out of the State; and business originating in the State and going to some other place in the State.

No one has made clear my position on this yet. I will say now—I shall not be able to prove mathematically that is correct, yet I do not hesitate to say, under oath, that I believe this is right: I believe to do the business of a purely state character it costs from four to six times in the State of Missouri as much as it does to do business that passes through the State altogether and does not stop in the State. I believe it probably costs twice as much to do business purely local in the State of Missouri as it does to do that which comes in or goes out. And that the sum total would be that it costs three times as much to do purely state business as it does to do all kinds of inter-state business.

Q. Per ton per mile?

A. Yes.

Q. You use the unit per ton per mile as the unit of measure?

A. I believe that has been used here.

Q. It has and it hasn't. I am very glad to have you use it. Then there is no confusion between you and me, or any one else in classifying all that freight here as inter-state freight.

A. Yes.

Q. You said all other freight, and I say inter-state freight. The terms as you and I understand them, are synonymous?

A. I think they are. I was thinking of this particular
858 business. (Indicating memorandum.)

Q. I understood the question the same as Judge Spencer asked it.

A. Then it was my mistake.

Q. Then I will ask you this question: assuming the average cost of handling state freight is proportionately three times as great per ton per mile as handling purely inter-state freight, and assuming further that the revenue to the Company for handling State freight is three times more than the revenue received by the Company for handling inter-state freight, then isn't it true that the expense of handling state freight is correctly determined by taking that percentage of the total freight expenses which the earnings on state freight bears to the entire freight earnings?

A. It seems to me you have reasoned in a circle there. Of course if you assume that the cost of doing local business is three times the cost of doing inter-state business——

Q. Per ton per mile?

A. Per ton per mile. And the revenue from local business is three times the sum of all other business, you might go on and assume that the ratio of expense is the same as the ratio of earnings, if you assume that.

Q. Yes I assume that. What is your idea—you have no information about the relative income to the Company in handling both classes of freight?

A. No, sir.

Q. Probably you know in a general way?

859 A. Probably I am not so well informed as you are. I am not able to quote a rate.

Q. Have you no idea, Mr. Willard, as to the amount or percentage of freight which we have called state freight under your designation, that is handled upon through freight trains?

A. No, sir.

Q. And I suppose the converse is true and you have no idea as to the other?

A. No, sir.

Q. What is your idea as to the general proportion?

A. I have really no information upon which to base an idea.

Q. What is your idea as to the relative cost of handling a ton of freight per mile on the local freight train as compared with the through freight train?

A. I cannot answer that because when I reach a conclusion as I have, that it costs three times as much to handle the local business as it costs to handle the through business, I had in mind more than the actual difference between the cost of local and through freight. I cannot tell you what the difference would be there.

Q. I undertook to take down the different items that you gave as entering into the increased cost of state business, and I get them as, expenses of agents and warehouse men.

A. Yes.

Q. Expense of way freight?

860 A. Yes.

Q. By that I suppose you mean local freight?

A. Yes.

Q. Expenses of employés?

A. Yes.

Q. And wages of men on way freights?

A. Yes.

Q. Liability to injury upon local freight trains?

A. Yes.

Q. And the cost of local facilities charged to local freight?

A. Yes, which I said I thought properly ought to be charged to local freight. Because they are not used in the other service.

Q. By that you mean such local facilities as are incident to the operation of local freight trains?

A. Not local freight trains, necessarily, but local freight business.

Q. For the handling of local freight and local freight trains: will that correctly state it?

A. Yes.

Q. And then you said the smaller amount of tonnage that is handled by the way freight as compared with the through freight?

A. Yes, I said these are some of the items.

Q. You mentioned these as the principal items, didn't you?

861 A. Those I mentioned out of mind. I would be glad to add now that another element of increased cost is the reduced efficiency which we are able to get from the cars and engines in that kind of service.

Q. With reference to the operation of local freight trains?

A. Yes.

Q. And you have put in as an element of cost the facilities charged to local freight, in the designation there, twice?

A. I just spoke out of mind.

Q. Was there any one of those expenses, that enter into the increased cost of doing state as compared with inter-state business, per ton per mile, that did not relate entirely to the increased expense of carrying a ton of freight per mile on local freight trains as compared with the expense per ton per mile for carrying freight on through freight trains?

A. In order to make my position clear I shall have to consider in my answer that there are two kinds of inter-state freight.

Q. Of course you may answer the question your own way.

A. And I want to say this; and I say this without any positive

knowledge, because I have never seen any figures on it, except that I believe the Auditor has stated that approximately 20 per cent of the business in Missouri is business that is purely local in the State.

862 Q. Twenty per cent of the revenue?

A. Yes, I presume so, revenue or business, I don't know which.

Q. We use the term revenue and business interchangeably, don't we, Mr. Sturgis?

Mr. STURGIS: No, sir.

Gen. HADLEY:

Q. Twenty per cent of revenue. There is no confusion on that.

Mr. STURGIS: He is quoting from Exhibit 1, which is revenue.

A. I think, on the best information I could get, that perhaps fifty per cent of all the business which we do in Missouri, probably passes through the State without any terminal expense at all. And the balance would perhaps be business coming in and business going out.

The MASTER:

Q. You mean fifty per cent of all the freight earnings in the State of Missouri is derived from business that passes through, without stopping at all?

A. I cannot say about earnings, but I think fifty per cent of the values. I don't know that that is true, from such knowledge of the business as I have, I do not know how the revenue compares.

In other words, as I view the matter, probably one half of the business we do in Missouri passes through the State in full trains, without any large amount of switching and without any terminal expense at all. And to handle that business, the terminal

863 facilities which I referred to, warehousemen, station agents, business tracks, etc., in the State, would not be necessary at all. That is what I have in mind.

Gen. HADLEY:

Q. There is no confusion upon that point. But the question I asked was as to whether all of the increased expense per ton per mile for handling state business, was not due to the increased expense per ton per mile for carrying a ton of freight on a local freight train as compared to a through freight train?

A. No, sir, because that would leave out of consideration altogether these extra facilities which I have mentioned.

Q. You have stated that these extra facilities were maintained for the purpose of operation of local freight trains?

A. No, sir, but for the necessities of the local business. We may operate freight trains without those.

Q. What do you mean by the necessities of the local business as distinguished from the operation of local freight trains?

A. I mean that in order to operate local freight trains, and arrange for freight movements on the main line, that proper sidings

are necessary. But in order to conduct local business it is necessary to have tracks, and warehouses and team tracks, and so on.

Q. What occasions the necessity of those commercial and team tracks?

A. The local business.

864 Q. What do you mean by local business?

A. Business that originates there or comes there.

Q. That business which begins or ends on those team tracks may come into or go out of the State?

A. Yes, sir.

Q. In this designation, "local business," you have used local business as relating to business which is handled by local freight trains?

A. No, sir, I have not. You have used that.

Q. If you are adding the expense of constructing those facilities at stations for the handling of local business, and that business may be state or inter-state business, how can you add that expense to the expense of doing state freight business?

A. I will explain. Because to the best of my belief fifty per cent of the inter-state business does not require the use of these facilities at all——

Q. But here is your team track and here is your commercial track?

A. If you will let me finish. Fifty per cent of the whole business does not require the use or the existence of those facilities at all. One-half of the business which is left—I assume it is half but I don't know how those proportions run, but of the business left, some of it, that which is purely local in the State, must be loaded and unloaded at those facilities. The other, which starts and comes in or starts out of the State and comes in, must use only a half of

865 those facilities. And in comparing those I said it should be only as one to two.

Q. Here is a team track maintained in Kansas City for the loading and unloading of freight from the car.

A. Yes.

Q. Does it make any difference in the apportionment of the expense of constructing and maintaining that team track between State and inter-state freight, as to whether the freight handled there comes from Macon, Missouri, or from Indianola, Iowa?

A. No, sir.

Q. But you apportion those expenses as against state freight?

A. No, sir, I didn't do that.

Q. Wait a moment, I have not finished. You apportion twice as much of those expenses against state freight as you do against inter-state freight that does not pass entirely through the State of Missouri?

A. I don't know as I do. I said the local facilities, this includes also the laborers who attend to it, the way bills and stationery and all the expenses incident to handling business. I have said that in my opinion it costs twice as much to handle business originating in the State of Missouri and ending in the State of Missouri, because

the terminal and originating charge are both in the State, and that it costs twice as much to handle as freight having only one terminal in Missouri.

866 Q. You conceive that the expense of maintaining a team track or a commercial track, which is used by inter-state shipments, should be apportioned to inter-state and state shipments, according to the volume of traffic which might use it?

A. Possibly.

Q. Wouldn't that be a fair and rational basis?

A. Yes, sir, and that is the basis of my contention that shipments in the State will make twice as much use of the facilities, if it must be loaded and unloaded, as the shipments requiring only one service, either loading or unloading.

Q. We are talking about expensive commercial tracks, maintained in Kansas City or St. Louis or at Macon, as Mr. Elliott referred to yesterday. If the volume of traffic using that track is divided on the basis of state and inter-state business, in the proportion of one to nine, isn't it fair that only one-ninth of the expense of maintaining that track should be apportioned to state freight?

A. Possibly if the assumption you make is true, the conclusion might follow. I have not any facts of that character in mind.

Q. You know of no other way of apportioning the expense of constructing and maintaining a particular portion of the way, except in reference to the volume of the traffic, the service being the same?

A. Yes, the service being the same. But I wish to make myself clear on this. A ton of freight which has to be loaded and

867 unloaded on the same facilities makes twice as much use of those facilities as a ton of freight which has to be loaded or unloaded only.

Q. It has to be loaded and unloaded?

A. On the same facilities I said.

Q. There is just as much probability that interstate freight would have to be loaded and unloaded?

A. But not in the State of Missouri.

Q. On the track we are talking about——

A. For inter-state freight it would have been loaded or unloaded out of the State of Missouri and necessarily it would be handled at only one terminal in the State of Missouri.

Q. You mean a shipment originating on this commercial track and ending in a little town would use both?

A. Yes.

Q. And inter-state would use it only once?

A. Yes, and for that reason the cost would be twice as much for one as for the other.

Q. Conceding you are right in your theory of the apportionment of terminal expenses, per ton per mile, what other expenses are there which you assign to state freight which are not incident to the operation of the local freight trains?

A. Well, if you include in the terminal expense all the items I mentioned, that is, not only the maintenance of those tracks, and

the property invested for that particular purpose and for no
868 other, if you include them, together with the additional buildings for that purpose and for no other, for the additional employés, included and necessarily for that purpose and for no other, together with the increased claims for liability to damage—I am inclined to think that covers the greater portion of the expenses, not directly due to the cost of local freight and through freight. I would not like to answer that definitely. I would like to think about it.

Q. I am taking up the five different items which you gave.

A. I don't remember what I said.

Q. You said agents and warehousemen.

A. They are all included in that terminal charge, as I have it in mind.

Q. Agents and warehousemen, who might be located at Macon, Missouri; do you say that the entire expense or that three times of the expense of that agent and warehouseman should be apportioned to state as compared with inter-state freight?

A. No, sir, I would like to say what I do mean. I would say one hundred per cent of his wages should be charged to state freight, and that portion of inter-state freight which comes in and out of the State. But no part to that portion of the business which passes through the State; which in my opinion makes fifty per cent.

Q. You make it difficult by making three classes.

A. I cannot make myself clear otherwise.

869 Q. Take the division of inter-state freight which you have mentioned and applying it only to such inter-state freight as originates in and ends out of Missouri, or vice versa, you have a warehouseman and agent at Macon, Missouri?

A. Yes.

Q. There is ninety per cent of the freight that originates and ends at Macon, Missouri, that either goes out of the State or comes into the State from points outside of the State, and only ten per cent of the freight handled at that point, which originates and ends in Missouri: how would you divide the expense incident to maintaining that warehouse and warehouseman, that station and that station agent?

A. Is that statement of percentage true, or are you assuming it?

Q. I am assuming it for the purposes of the question, but have no hesitation in saying that I believe it is true.

A. Assuming it is true, I say that my statement made in the first place applies to that. I said that on a ton mile basis the expense incident to business originating in the state and stopping in the State was twice as great as that originating in the State and going out of the State. Now on the ton mile basis that same thing would hold true whether the percentage of business done, at any point, was fifty to fifty or ten to ninety. A division of the volume would have no effect on the ratio of the unit.

Q. I have excluded it at your request, because you said you
870 could not answer otherwise, inter-state freight passing entirely through the State of Missouri?

A. Yes.

Q. I am taking freight that originates or ends at the town of Macon, where you have a station agent and a warehouseman.

A. Yes.

Q. Now for the purpose of illustration fifty per cent of that freight is inter-state freight we will say.

A. Yes.

Q. In your second classification.

A. Yes.

Q. And fifty per cent of it is state freight?

A. It does not matter what that is.

Q. Now if fifty per cent of the tons handled at that station by the station agent and the warehouseman, is state freight; and fifty per cent of that handled by those men and those facilities is inter-state freight, why should not the expenses be divided according to the volume of the traffic?

A. Because that is only half of the proposition. So far as that particular station is concerned, that might be true.

Q. I am considering that one station.

A. We cannot consider just one station when we are considering freight that requires two stations.

Q. I will consider the other station.

A. I cannot separate my conclusion, that way, because as I say it necessitates twice as much to do the local as the inter-
871 state business; I have in mind that there are two terminal expenses on local business.

Q. Here is Macon, and here is a town named Wilson where you have a warehouseman: now fifty per cent of the freight received and shipped out from Macon is inter-state freight and fifty per cent is State freight?

A. Yes.

Q. Fifty per cent of the freight handled from Wilson is state freight and fifty per cent is inter-state freight?

A. Yes.

Q. Fifty per cent of the freight handled from Wilson is State freight and fifty per cent is inter-state freight?

A. Yes.

Q. Should not the expenses of those two stations be divided equally between the two classes of freight, according to the volume.

A. Yes, I think they should.

Q. And if it was found to be, by an examination of all the stations in the State of Missouri, that the tons handled bore the relation of fifty per cent state and fifty per cent inter-state freight at each station, then it would necessarily follow as an arithmetical proposition, that the whole was equal to the sum of the parts?

A. No, sir, it does not follow at all. Because you have not taken into account that the fifty per cent of the state business which
872 originates at Macon is also to be handled at some other point in Missouri.

Q. I have taken two points?

A. You have taken an originating point but not the destination.

Q. But if each station in the state of Missouri kept its state and

inter-state tonnage separate, kept a record of it, and if at the end of a year each of those stations would show to you that the percentage of state and inter-state freight handled at each of those points was in the ratio of fifty per cent, wouldn't it be fair to divide the whole expense of maintaining those stations, according to the volume of the traffic?

A. Probably so, but that proves nothing, because I am basing my conclusion on the ton mile basis, and you are dividing the volume of business without any reference to the fact that the ton mile in Missouri has to cover two terminal expenses and the inter-state covers only one expense.

Q. I was calculating only one item of expense, which you had given.

A. Yes, but I cannot agree with the position you have taken. That while the tonnage may be divided between state and inter-state, that determines nothing with reference to the cost per ton mile.

Q. The cost of handling a ton of freight per mile is made up of all the different elements of expenses, included in "conducting freight and maintaining plants."

873 A. Certainly and a ton of freight in Missouri has to carry two terminals and a ton of freight coming in, or a ton of freight going out, has to carry only one.

Q. Then you do not agree with Beale and Wyman in their statements "that the cost of maintaining a plant is constant and can be justly divided between the different kinds of traffic in proportion to their volume."

A. I don't know Beale and Wyman and I don't know what their position is.

Q. Any way you do not agree with that proposition, whether Beale or Wyman or anybody else?

A. If you ask an answer to that I will have to ask you to repeat the question.

Q. That the cost of maintenance of a plant as distinguished from the cost of conducting transportation is a constant expense which should be divided between state and interstate traffic according to their volume?

A. I will have to think about that. I am not prepared to say whether I agree or disagree with it.

Judge SPENCER:

Q. Are those gentlemen lawyers or real estate men?

Gen. HADLEY: They claim to be railroad men, at least they have written books on railroad matters.

Q. You spoke of there being the same use of local facilities by inter-state freight?

A. Yes.

Q. You mean by that what we have already gone over, freight that would originate between division points?

874 A. I meant what we have just been talking about, that any individual ton of that kind of inter-state freight originated in Missouri or that went out of Missouri, made one-half as

much use of those facilities as freight originated and ending in Missouri.

Q. Your theory would be that the cost of maintenance of a plant, such as station agents, warehousemen, local trackage, switching tracks, the expense should be divided on the two-fold basis, because there is only one terminal used by the inter-state shipments.

A. That does not follow at all. Maintenance of plant is considered as a whole and I am trying to say that I think this difference in cost—I don't say it costs three times as much to do all local business as to do all inter-state business, but I say the difference in cost per ton per mile is as two to one or three to one, but not in the aggregate as you say there. It might be they would be greater or would be equal, but I think the cost per ton mile should be one to two in one case and one to three, four or six in the other case.

Q. But the aggregate you think should be divided according to the volume of traffic?

A. It might be, but that has no bearing upon the cost per unit.

Q. If the way freight handling less tonnage than the through freight train, that of course, is an increased expense which you assign to the state freight entirely, by reason of the increased ex-
875 pense of operation of the local freight trains as compared with the through freight trains?

A. No, sir, it naturally follows. I do not add it to that, because if I did I would not make the difference I do between the two classes of inter-state freight.

Q. Then the increased expense per ton per mile of handling freight upon a local freight train as compared with a through freight train, should be divided in fairness between state and inter-state traffic according to the tons per mile hauled by the local trains?

A. Not necessarily, the increased cost of running the local freight should be chargeable to the cost which makes it necessary to run those freights at all.

Q. That includes both the handling of the state and inter-state freight?

A. It includes all state and some of the inter-state freight.

Q. For that portion of the inter-state freight that is handled upon local freight trains, as compared with that portion of the state freight which is handled upon local freight trains, it is entirely fair between those two classes of freight to divide the expense per ton mile hauled?

A. Possibly it would be.

Q. And the same is true upon the through freight trains isn't it, that the expense per ton per mile of carrying freight upon a through freight train should also be apportioned between the two classes of freight in accordance with the ton mile hauled.

876 A. I don't know as I quite catch what you mean, but as I understand you you mean that a ton of through freight that is carried on a state freight train should have the benefit of the increased cost of handling?

Q. Yes, that is the point.

A. Yes, that is true.

Q. Where did you get the figure that 26 per cent of the entire mileage of the Burlington System in Missouri is necessary for the doing of what you call local freight business?

A. I do not get that idea at all. Because the percentage of local freight mileage in Missouri is very much in excess of that.

Q. What did you mean by that 26 per cent of trackage?

A. What I said was this: that 26 per cent of the miles of railroad in Missouri was made up of tracks required for the handling of either local business or that portion of the inter-state business which starts or stops in Missouri as distinguished from passing tracks and main tracks used simply for the passing of trains. That is what I had in mind.

Q. The first of your subdivisions of inter-state freight uses something more than the main track and the passing tracks, doesn't it?

A. I don't know just what you refer to now.

Q. Taking your class of freight that goes entirely through Missouri, originating at a point outside of the state and ending at a point outside, but passing through Missouri. Do you say that freight would use only the main track and passing track?

A. Practically so.

877 Q. Don't the locomotive that hauls that freight have to be changed in the State of Missouri?

A. Of course. But I thought you were referring only to tracks. Of course that has to be hauled by engines, and all that.

Q. But—begging your pardon for interrupting you. In effect there are about three hundred miles of track in the State of Missouri which trains running entirely through the State would have no occasion to use. In the handling of through business, passing through the State, I mean.

Q. Does not strictly through business use all the tracks of the Company?

A. No, sir, three hundred miles they do not have to use at all.

Q. You refer to those branch lines?

A. I did not include any of the main tracks at all. Simply side tracks, team tracks and warehouse tracks, simply business tracks, that are not necessary at all for the through business.

Q. Where do you get those figures?

A. From our records.

Q. Your records show that?

A. I can get it. Our Engineering Department can show it.

Gen. HADLEY: In accordance with the suggestion of Judge Spencer, I should like to examine those records.

878 A. That is a matter of general information. I think it is filed with the Board of Railroad Commissioners. It is shown in our Annual Report.

Q. There is filed with the Board of Commissioners, the number of side tracks as distinguished from the main tracks?

A. Yes, sir.

Q. But you would not say that through shipments passing through the State of Missouri, would not use side tracks?

A. No, sir, I have not said that. In addition to that 294 miles, I think it is, of tracks used for business purposes, and which constitutes 26 per cent of our entire mileage, there are also about eighty miles of massing tracks. They are used by the through trains. I have not included that in this answer at all.

Q. By the 26 per cent of the trackage being necessary for the doing of local business, as you have characterized it, as distinguished from inter-state freight passing through the State of Missouri entirely, those are what you call commercial tracks?

A. Yes, sir. The Burlington, of all the tracks which it has in the State of Missouri, 33 per cent are side-tracks. Of that 33 per cent 7 per cent are passing tracks, and 26 per cent approximately are for business purposes. That is not exactly correct but only approximately so.

Q. Your first division of inter-state freight passing entirely through the state, use only the business tracks?

A. Yes.

879 Q. And the other 26 per cent is used by the second division of inter-state freight and by state freight?

A. Yes, that is right.

Q. And how about the expense of those passing tracks? How would you divide the expense of those?

A. I suppose that might be divided in the same way as the main line, probably.

Q. How is that?

A. If I were to divide it I would divide it according to the use of it.

Q. According to the volume of traffic?

A. I presume so. I am not an accountant. Mr. Sturgis can answer you better than I, but I presume that would be right.

Q. Does the 80 miles include the large terminals in the large cities?

A. It does not include all of them. No, sir, the 26 per cent would include the greater portion of those. Out of the 26 per cent there might be two per cent of the large terminals which might be added to the 8 per cent of passing tracks used by through trains. I should say that would be a fair division. I have not thought of that, at any rate.

Q. You have not taken into consideration the large terminals at St. Louis, Kansas City, Hannibal and St. Joe?

880 A. Yes, but only a small percentage of those terminals are used by freight passing directly through the State of Missouri.

Q. In what case would a freight train pass through the State of Missouri, with its integrity unbroken?

A. A shipment of wheat from some point in Nebraska might pass through St. Joe—you asked me I presume to assume a case?

Q. Yes.

A. I will assume a train of wheat starts from Lima, Nebraska, and goes through St. Joseph, intended for some point in Missouri. That train necessarily would occupy only one side track, if it occu-

pied any, in St. Joseph, and would occupy only one track at a time in passing a train, and in that way continue through the State and in that case would have no use of the facilities used for local freight.

Q. Would that train stop and put on or off cars?

A. In the train I presume, no, sir.

Q. How large would it have to be to maintain its integrity?

A. I cannot answer that off hand.

Q. I thought being in charge of that Department you would be able to give me an approximate answer.

A. I cannot tell you the details.

Q. Isn't it a very unusual occurrence to ever have a shipment of sufficient size, originating in one point and ending in another point, and passing through the State of Missouri?

A. Yes, sir, and it is because of that fact, upon reflection,
881 and to meet that difficulty, possibly two per cent of the 26 per cent could be taken out and put into the 8 per cent in order to meet that very condition. If it all passed through, like the one I have assumed, I would let the 26 per cent stand.

Q. How often would you have a train such as you give in your example?

A. Not very frequently and that is why I modify my figure and reduce it to 24 instead of 26.

Q. In the usual conduct of freight traffic, the freight train is what railroad men call "kicked" to pieces at the large terminal points?

A. No, sir. We aim as far as possible to prevent that.

Q. But that is only possible where you have a large enough shipment bound to the State of Missouri to constitute a train by itself?

A. Largely, and because the through business goes that way is the reason we can do it more cheaply. We avoid, as far as possible, terminal switching and the incidental delays at terminals to equipment.

Q. But if you haul a train of twenty cars from a point west of the Missouri River into St. Joe, and the grades were such and the tracks were such across the State, that they could haul thirty cars, you do not mean to say that you would not add ten cars at St. Joe?

A. Yes, sir, they might, but that would not necessitate any switching of the twenty cars.

Q. You mean if you put the ten cars on at St. Joe?

882 A. We would simply put them in front or behind the twenty cars.

Q. If you had a train of thirty cars going into St. Joe from the west, of which ten were to be distributed between St. Joe and Brookfield, the train would be put up at St. Joe?

A. That would make switching incidental to that freight on account of the local business, and make that business more expensive than the inter-state.

Q. That would be inter-state business?

A. That would be a portion of inter-state freight that I have mentioned.

Q. Cannot you give an idea of the per cent of inter-state freight passing entirely through the State of Missouri?

A. No, sir.

Q. You have no idea upon that point?

A. No, sir, I said I thought fifty per cent of the business handled in Missouri was business that went through.

Q. What percentage is unbroken trains?

A. I cannot answer that.

Q. All that portion of the freight that goes through the State of Missouri, which does not go through in an unbroken train, necessarily uses more than the passing track?

A. It might. And I have assumed it takes two per cent. I modified my original figures.

Q. Don't you think on reflection that you have been very conservative in taking only two per cent?

A. No, sir, I think I have been very liberal. I am very will-
883 ing to stand by that. That means 16 miles of track and I think that is more than is required.

Q. Take such an item of expense as roundhouse expenses, wipers, etc., how would you divide that expense between state and inter-state business?

A. I would divide it in this way. The engines handling through freight business make longer runs between terminals and make more mileage in the aggregate, I think they have more miles run upon which to pro rate expenses. And necessarily that terminal expense would be less for the through than for the local freight. The local engines making fewer miles per day and requiring just as much terminal expense as the through freight, and even more, because the use of the way freight engine at terminals and between terminals wears out the parts more rapidly than on an inter-state engine.

Q. That is an apportionment entirely between through freight and way freight trains?

A. Yes.

Q. I was asking you how you would apportion round house expenses, boilers, wipers, turntables and such things, as between the state and the inter-state business?

A. I said one to three. I think I said at first I thought all of the expenses incident to moving a ton mile of local freight would probably be three times as much as all the expenses of moving a ton mile of all kinds of inter-state freight. By that I did not mean it would follow that in each individual item the ratio would be one to three.

Q. I understand that.

884 A. On the roundhouse I am unable to tell you that. I could venture a guess perhaps. I have said that in stationery there would be a difference of 100 per cent. On some items of maintenance there might be no difference at all.

Q. In items of maintenance there might be an additional expense to be apportioned to what you call through freight trains and an additional expense apportioned to inter-state?

A. I cannot think of any additional expense to be apportioned to through freight trains.

Q. Take the expense of the main tracks: what is it that wears out the track and necessitates the work of the section hands.

A. The passing of trains. But I cannot see why a ton mile of

through freight would have more wear than a ton mile of local freight. And I cannot understand why it would cost more for a ton mile on ties. I didn't have that in mind. But I will say the inter-state costs less because for every ton of through freight you handle fewer tons of dead freight than on the local. Or, conversely, for every ton of local you handle proportionately a greater number of pounds of dead freight, which all enters into it.

The MASTER:

Q. What do you mean by "dead freight"?

A. Perhaps I should not have used that term. Did I say dead freight? I mean the average weight of the car of through freight is much greater than the average weight of a car of local freight.

885 Because the average weight of the local freight is less—by dead freight I mean the weight of the car on the tracks. If a car weighs 40 tons and in one car you have ten tons and in the other 40 to 60 tons, the percentage of dead weight is greater in the one than in the other.

The MASTER:

Q. You might call it dead-head freight, because it pays nothing?

A. Yes, it pays nothing but it wears out the tracks just the same.

Gen. HADLEY:

Q. It is the heavier equipment passing over the tracks, and this rapid movement of the equipment, that wears out the tracks?

A. The local passes over it too. As far as the difference of wear is concerned there is no perceptible difference in the wear of the tracks.

Q. The heavier equipment does not add to the wear and tear of the track?

A. It might a very little.

Q. If the percentage of state freight carried by through freight trains as compared with the percentage of inter-state freight carried by through freight trains is less than the percentage of all state freight to all inter-state freight, then you say there should be a greater amount of expense for the maintenance of track apportioned to the inter-state freight?

A. I don't know whether I said that or not. I will ask you to have the question repeated.

Q. I can make it more clear perhaps: if the through freight

886 trains carry inter-state freight and state freight in the same proportion that the two classes of freight bear in their entirety in the State, then the expense for the conducting of the two classes of freight, so far as it relates to the two classes of freight, should be divided equally, according to volume?

A. I am inclined to think that may be true.

Q. If there is one thousand ton miles of state freight hauled by through freight trains, and nine thousand ton miles of inter-state freight hauled by through freight trains, the expense incident to the operation of the through freight trains and the expense of the

maintenance of track caused by that traffic, should be divided equally between the two?

A. Possibly those two items should. But understand, that interstate freight I have divided into the smaller class; and local freight put into a through freight train requires an additional amount of switching not required by the freight passing through the State of Missouri. Further, freight moving locally through the State requires more switching—I think it follows logically it requires more switching in the State of Missouri than the freight which comes into the State in a through train and requires no switching to get into the train after it gets into Missouri.

Q. You are adding an additional element. So far as the operation of the through freight train itself, the percentage should be on the percentage of tons mile?

887 A. After the cars get into the train and are hauled from one point to another, I should certainly agree that the expenses incident to that particular movement might properly be divided in relation to the volume of the business.

Q. Are you familiar with the expenses which should be charged as against a shipment for terminal handling, the rate per ton?

A. Do you mean do I know what it costs to handle freight at terminals?

Q. Yes?

A. I know in a general way what it costs.

Q. What is your idea?

A. It varies from twenty-five up to sixty and seventy cents a ton. I cannot say what the average is as I never had occasion to look it up.

Q. That would be determined, wouldn't it, according to the expensiveness of the terminal?

A. To a large extent, and also that in many of our buildings—and this is true especially of local freight we are required to maintain a minimum force to keep the stations open at all, and when the business is small as it is in some portions of the year, the whole of that expense would be apportioned to the station, and make it high. At large stations it can be done cheaper.

Q. The converse is true, that at small stations where you have a small amount of business, you have a small expense of side track?

888 A. Of that 294 miles in Missouri, probably 200 of them are at the small stations, one hundred and fifty I should say. It is quite small in detail, but it is quite large in the aggregate.

Q. That is an inexpensive style of construction, as compared with the construction of terminals at these large commercial centers?

A. Yes, as a general proposition that is true.

Q. You have said that the average division was as nearly as possible 100 miles in length?

A. I don't think I said that. I said we aim to get it not less than that.

Q. And that is the distance an engine has to run in a day?

A. No, sir, an engine ought to run more in a day, and through freight engines average from 130 to 160 a day.

Q. In the State of Missouri?

A. Many in the State.

Q. Don't you change engines going across the State of Missouri at every division point?

A. Yes, sir, but we don't have to hold it there. We start it out again.

Q. The same is true of local engines?

A. No, sir. We assign regular engines to do local work. We cannot run the local at night. The engine that starts out this morning runs until tonight and then it would lay up tonight.

889 Q. What would be the length of time you would hold a through engine?

A. Just as short a time as possible. Returning it in some instances in two hours.

Q. It would depend upon the necessities of traffic in the two classes of traffic?

A. No, sir, it depends in the one case on the way freight, which would be the practice, to hold it over night and Sundays. The through freight engine runs all the time it is fit to run.

Q. Did you take into consideration the larger percentage of wear and tear by the greater percentage of use?

A. Yes, sir and that is one of the great reasons why it is cheaper to haul through freight, which is hauled generally behind those engines.

Q. Isn't the expense greater because of the wearing out of the engine being greater?

A. Yes, sir, but the increased number of tons is so much greater that the cost per ton per mile is less.

Q. In that case the comparison is between the through and the way freight trains and not between state and inter-state freight?

A. Yes sir.

Q. Do you know the average haul of freight beginning and ending in the State of Missouri?

A. No, sir.

Q. How long do you say you have been with the Burlington Company.

890 A. Since January 1, 1904.

Q. You have entertained this opinion as to the increased cost of doing what you call state business as compared with inter-state business, since that time?

A. No, sir, because I had no opinion to start with.

Q. When did you come to have this opinion?

A. This matter has been under more or less consideration and discussion, so far as I know, for five or six months. I think possibly six months ago I had not given it any particular thought. Except in a general way, if I had been asked at any time, I should say it cost more, but what the ratio was I could not answer because I did not try to answer that.

Q. Did you prepare an argument or discussion of this matter

in 1905, during the session or immediately following the session of the Missouri Legislature?

A. I don't think I ever did. I don't recall that I ever did.

Q. Anyway, since you have been in possession of this opinion, have you ever consulted the Traffic Department or the Accounting Department, to ascertain if the revenue derived per ton per mile upon state freight was proportionately as high as the increased expense per ton per mile of handling state freight?

A. I never discussed that feature with anybody. But replying to your former question I will say this—because it has just occurred to me—that as many as 12 to 15 years ago I secured a
891 report of the L. & N. Railroad Company put out by Mr. Fink and that may have influenced my thoughts; so, while I have thought of it only for a short time particularly, generally I have entertained that idea for fifteen years.

Q. Did you follow the testimony of Mr. Fink in the Nebraska rate case?

A. No, sir, I know nothing about it.

Q. Since this matter was suggested to you, how did it happen that you, in your interest to get as large a return as possible, did not go to the Traffic Department to find if the handling of this state freight produced three times as much revenue as the handling of the inter-state freight?

A. Because that was not assigned to me as one of my duties when I came here.

The usual hour for recess having arrived, recess was here taken until 2 o'clock p. m.

After recess on Wednesday, October 24, 1906, the following proceedings were had. The cross examination of Mr. WILLARD continued as follows by Gen. Hadley:

Q. On account of a misunderstanding between myself and my associates as to what your testimony was, I want to ask you some questions: in estimating the additional expense for state as compared with inter-state shipments, by reason as you say that there are two terminals in Missouri on the state freight and only one terminal in Missouri on inter-state freight, do you say that the fact of the two terminals being in Missouri on state freight would make the expense per ton per mile double on the state freight what it was on
892 the inter-state freight?

A. No, sir, I did not say that. I said that was one element only.

Q. Your idea was that simply doubled that portion of the expense which was assignable to terminals?

A. Yes, sir.

Q. Another proposition to see if you and I correctly understand each other, and are simply disagreeing through a different form of expression:

A shipment fifty miles in length, beginning out of the state and ending in the State, of which 25 miles is in the state; another shipment of fifty miles in length beginning and ending in the State

of Missouri: now when you say there are two terminal charges upon the state shipments with which you do what—charge to the expenses per ton per mile of that shipment?

A. I said there were two terminal charges on that shipment in the state and if you use the ton mile as a unit that would be affected by those two terminal charges.

Q. The two terminal expenses would be assigned to the ton per mile expense for handling?

The MASTER: Do not misunderstandings arise, when it is in relation to that portion of the expense which must be assigned to business of the State of Missouri, there being only one terminal in the state in the one case and two terminals in the State in the other case?

Gen. HADLEY: Yes, I understand that.

Q. But there would be two terminals to be assigned to the
893 expense per ton per mile on the fifty mile shipment, which was wholly within the State, and upon the inter-state shipments there would be but one terminal expense to be applied to the 25 miles which was in the State of Missouri, wouldn't there?

A. I don't know that I quite agree with you as to that. We were speaking—at least I had in mind the expense we were put to in the State of Missouri. And I said the expense we were put to because of state business was in my opinion not less than double the other, because we had to do in the State of Missouri twice as much for each ton of that kind as we had to do for each ton that came from somewhere else. I understood we were discussing our expense in the State of Missouri. For station force and track and things in that State, incident to the business, and that what was done in some other State has no bearing on what was done in Missouri alone.

Q. But the expense per ton per mile of handling fifty mile shipments in Missouri, with two terminals, is determined by the fact that the expense on two terminals is distributed over the entire shipment of fifty miles?

A. I suppose so.

Q. And in the fifty mile inter-state shipment, one terminal expense in Missouri is distributed over twenty-five miles, in determining the amount of expense for handling the inter-state shipments, per ton per mile, in Missouri. Am I not right on that, and is not that correct?

894 A. It may be.

Q. Isn't it?

A. You ask me now as to the distribution of the cost against the revenue——

Q. No, I do not ask you that.

A. —and I said I had no understanding as to how business coming out of the State—how the revenue was divided. I know in many instances arbitrary mileage is allowed and arbitrary terminal expenses are allowed. That is something I cut out altogether.

Q. Assuming you haul the freight for nothing and haul fifty miles in Missouri, a 20,000 ton car, and you handle fifty miles of an inter-state shipment, twenty-five miles in Iowa and twenty-five miles in Missouri, and did not get anything for that: I want to

know your idea of what it costs you for those two shipments: you figure in the Missouri shipment two terminals, distributed over fifty miles of traffic, and on the inter-state shipment you apportion the expense of one terminal, over twenty-five miles of haul.

A. I think your assumption that we haul freight for nothing in the case you have taken, is in accordance with the fact——

Q. I mean you get no revenue at all.

A. For hauling, you said. I should say that on a shipment of fifty miles or less, the terminal expenses in many if not all, would cover practically the whole rate, and you would practically haul the freight for nothing, as you have stated.

Q. That would be just as true of inter-state freight for the
895 fifty miles?

A. Yes, sir, if the terminal expense out of the State were the same as in Missouri.

Q. That would have to be reckoned as to the size of the terminal in the town where the freight originated?

A. No doubt.

Q. In estimating the expenses of agents and stations and such things as that: you spoke of an assignment between local and through freights and also an assignment of those expenses which you thought would be proper between state and inter-state freight?

A. Yes.

Q. Did you consider also the divisions between passenger and freight, and did you consider the further element, that these station expenses would exist if there were absolutely no state freight, absolutely no state freight business done in Missouri by reason of the passenger traffic?

A. Yes, sir, I think I gave that full consideration, because I intended to have in mind only those expenses which it seemed to me had direct reference to the freight business.

Q. But you mentioned a station agent at a small town of one thousand inhabitants?

A. Yes.

Q. There would not be the slightest question that if the road desired to abandon the state freight business and did inter-state business and passenger business, you would have to maintain your agents and your stations?

A. You would have to have an operator in order to do
896 business. But in the small towns the operator could sell tickets and generally attend to your warehouse or the freight tracks, and the agent or warehouseman would not be required at all.

Q. In an ordinary town of two thousand people, you do not have a warehouseman, do you?

A. Frequently we do.

Q. As a usual thing you do not?

A. I cannot say as a usual thing. In a town of two thousand people we would probably have an agent and a helper whose principal business would be looking after the warehouse.

Q. And work in the warehouse, looking after less than car load shipments?

A. Very likely.

Q. And if the road received no less than car load business, that could be done by one man alone?

A. If you had not a warehouse you would not need a warehouseman.

Q. The warehouse and the warehouseman are maintained primarily for the purpose of convenience in handling less than carload shipments?

A. Primarily yes.

Q. Is not there more expense to the Company in handling less than car load shipments that are interstate than in the handling of car load shipments wholly in the state, per ton per mile?

A. No, sir, I think not. I think it follows that a ton of
897 freight from any point in the State, probably, the average length of haul on that shipment will be longer if it goes to some point outside the State, than the average length of haul from one point in the State to another point in the State. While I have not figured on that I am clear in my mind that the average haul of purely State business is much shorter than on inter-state business. Having two terminal charges to dispose of, the terminal charge on purely state freight is higher than on inter-state business, even higher than one to two, that I took this morning.

Q. But you have no figures on the average length of the two hauls?

A. No, sir. We have business going from one place to another in the State, and then going from one point in the State to a point outside the State. In the second place I think the haul would be longer than in the other.

Q. Must not that be determined by commercial conditions and the topography of the country? Take a main line 25 miles north of the north line of Missouri and 25 miles south of the south line of Iowa; there would be far more exchange of traffic between north and south of the Iowa line on the Burlington Road than there would be exchanged in fifty miles south of that in Missouri, from the varied topography of the country and the construction of your line?

A. Yes, probably, but you can conceive a state shipment going in the State of Missouri and an inter-state shipment going to
898 the east from Missouri and that all modifies it necessarily.

Q. It must be determined on averages, in each instance?

A. Yes, but it seems to me the haul is enough longer so that the cost per ton must be necessarily less in the inter-state than in the purely state business.

Q. Have you any idea of the average length of haul of either class of freight?

A. No, sir, I have not.

Q. What is your idea of the minimum expense as determined by distance hauled of the freight?

A. I have this idea: that any shipment in Missouri—averaging it just off hand as it appeals to me—perhaps any distance within fifty miles, certainly any distance within 25 miles, and probably any

distance within 30 miles, the terminal expenses of themselves would eat up all the revenue we get.

Q. That is not what I asked you. The question I asked you was as to what distance you would have to haul a car of freight in order to get the minimum of expense in operation?

A. You would have to haul it the longest distance possible per ton mile.

Q. If you haul a car of freight uninterruptedly the distance of one division, don't you then get the minimum cost of operation?

A. No, sir, because you have two terminal expenses and the
899 terminal expenses per unit would be less if the car was hauled two hundred miles than if it were hauled only one hundred miles.

Q. You spoke of knowing Mr. Fink and reading his testimony?

A. I said I read it many years ago.

Judge SPENCER:

Q. You referred to his book and not to his testimony?

A. Yes, sir, his book. One of his reports.

Gen. HADLEY:

Q. Don't you recall Mr. Fink's idea was that the minimum expense was secured by an operation over one division?

A. If Mr. Fink said that, in the meaning you have given, I differ with him.

Judge SPENCER:

Q. Gen. Hadley, you are reading now from Mr. Fink's testimony and not his book?

Gen. HADLEY: Yes, sir.

Gen. HADLEY:

Q. I started to ask you about less than car load business and you diverged onto the difference of expense on the distribution by distance hauled. The question I asked you in the first instance, which I think you diverged from, was that there was a greater expense per ton per mile in the handling of inter-state freight in less than carload shipments than in the handling of less than carload state shipments?

A. I don't agree with you.

Q. If you receive a less than car load shipment from another railroad you have to change it from that car to your car, or that
900 is the ordinary way of conducting the business, isn't it?

A. That used to be but it is not so altogether now.

Q. It is the usual way?

A. I don't know that it is. I won't say it is.

Q. Do you know that it is not?

A. No, sir.

Q. If you are not informed on that I will not carry out the examination.

But assuming that is so, and the fact that less than car load busi-

ness handled in the state would not change cars, that would be an added expense?

A. I don't think that assumption is well founded, because the state line would not be considered in handling the freight.

Q. Not on your own line?

A. Or any other line.

Q. If you received at St. Louis a less than car load shipment from the Baltimore & Ohio, that would be put into the Burlington warehouse at St. Louis and then loaded into a Burlington car for its destination in Missouri?

A. It might.

Q. Wouldn't that be the usual course?

A. No, sir, it would not be the usual course.

Q. Would you receive a car from the Wabash and pay them car service in order to avoid changing it from their car to one of your cars?

A. Yes, sir, we would do it because we would like to have their cars to load back.

901 Q. But under ordinary conditions you would not?

A. Under like conditions as the last six months or year we would take anybody's car to load a car.

Q. You would not if you had the ordinary amount of equipment?

A. I grant you that. But that assumption you made is not dependent upon geographical lines but commercial conditions.

Q. But if the road was properly equipped you would not have to take the cars of other companies?

A. That depends on what you mean by proper equipment. If you mean that a road had proper equipment at all times, so it could fill the maximum demand at all times, that would be true. I don't think it would be wise to have that much equipment to be idle six months in the year.

Q. But if a road was in condition to have cars enough to do all its business it would not take cars from other roads to load?

A. Not unless the cost of transferring the business was less than we would have to pay for car mileage or on the car of the other road.

Q. This less than carload shipment business is a small portion of the entire business?

A. Yes, sir.

Q. That is true of both state and inter-state business?

A. Yes.

902 Q. But a large part of these expenses, warehouse, freight hustlers around the warehouse, etc., is necessitated by less than carload shipments, be they state or inter-state.

A. That may be so. You can imagine a place where a lot of carloads, brick, tile, stone, sand, where there might be a lot of team track, carload shipments, and it might be necessary to have a man there, and it frequently is necessary, to look after those cars and take care of them while they are being loaded and unloaded on the team track. And yet those are not less than carload shipments and the warehouse is not used. I would not say the proposition would

work out universally, as you make it. It would no doubt apply in the majority of cases.

Q. Would you think the carload business would be at least 95 per cent of the freight business?

A. Carload business of the railroad?

Q. Yes.

A. No, sir, I do not think it is.

Q. Do you think less than carload business would be more than five per cent?

A. Yes.

Q. Can you give any more definite idea?

A. I do not think it would exceed ten per cent; probably seven or eight or maybe ten per cent. I think it is more than five.

The MASTER:

Q. You are now referring to the volume?

A. Yes, I have in mind the volume, in that instance. I understood that is what he meant, the amount of business and the earnings.

903

Gen. HADLEY:

Q. Certainly my idea was earnings.

Redirect examination by Judge SPENCER:

Q. It is impossible to figure it to a mathematical certainty, the actual difference between the cost of local business and through business?

A. I think so. I made that statement this morning. I think it is.

Q. It does not illustrate your expert opinion, when Mr. Hadley supposes the carrying of a through car fifty miles at $5 and a local or state shipment 50 miles at $15. You cannot illustrate this question by any simple example of that kind, can you, where all the elements are not known?

A. I think I said no to that this morning, that I could not do it.

Q. In that instance you have a terminal on each of the shipments, they go exactly the same distance and contain the same number of pounds, so if we could do that on all the local business in Missouri and compare it with all the through business, it would not be difficult to figure it out?

A. I think it would be very difficult in any event to figure it out but I think it is now quite impossible as we now keep account and do business. It is not information that would be necessary for the operation of the road and it would be quite expensive I am sure.

Q. I understood you to say in the beginning, in effect, that it costs three times as much in handling the State business to earn a dollar—that is, it costs three times as much to earn a dollar in state business as it did on through or inter-state business: is that a fact or not?

904

A. I don't know that I said that. I think I said this morning that in my opinion I felt I could take my oath that it cost three

times, but I thought it was more than that. I have read testimony of men and I consider them able men, who have put it much higher.

Q. That would be the minimum in your opinion?

A. The figures I have given were absolutely the minimum, because I stated that as my opinion under oath. If that were given to me, if I were asked my opinion elsewhere, I might change that.

Q. Considering that as through business which does not touch any terminal in Missouri, you say it costs at least six times as much to do the local business as that?

Gen. HADLEY: He said six.

A. I said four to six. I think I made a mistake this morning in the percentages on that business. It was my understanding at first that 20 per cent of the local business was the volume of the business instead of the income. That would actually reduce the amount of business. I assumed in reaching the conclusion I did reach, that whatever that percentage was, the percentage of business going out of the State and coming in was fifty per cent, one and one half times as much. As I was mistaken in my first proposition and got the 20 per cent too high, instead of fifty per cent going through and not touching the state, probably that was more nearly sixty per cent. In my opinion strictly state business will cost from
905 four to six times as much, and it may cost more. Many accidents incident to state business are not found at all in that large volume of business.

I would like to add one other thing, if you please. In reply to the Attorney General this morning I said there was a difference in the efficiency of the power on the way and the through freight. That the engine made much greater mileage on the through than on the way freight. I should have added there was an equal difference in the mileage of the cars. In the ordinary handling of business cars that operate on the local freight are not moving at night or on Sundays; and the cars in the other kind of business move all the time as much as possible. I should have said that this morning.

Recross examination by Gen. HADLEY:

Q. Your testimony as to any increased expense in the doing of state as compared with inter-state business, has not been made in any way with relation to revenue produced?

A. No, sir.

Q. It is entirely with reference to the physical act and the expense of maintenance of plant?

A. Yes.

Redirect examination by Mr. FRANK B. HAGERMAN:

Q. However you ascertain those things, your judgment and experience is, with this actual property, that it costs that much more to do the state than the inter-state business?

A. Yes, I feel sure of the figures I have given. I think even they are very much higher. But I am sure of what I said.

906 Recross examination by Mr. HADLEY:

Q. Have you in reading the testimony of men who have put it much higher, also met with testimony of recognized experts who have put it much lower?

A. Never, in a single instance.

Q. Do you know Mr. Dilworthy, who was formerly with the Burlington, I think?

A. No, sir.

Q. And who testified in the Nebraska Rate Case that it was only ten per cent greater expense per mile?

A. I think he was wrong if he said that.

Q. Are you familiar with the recent case heard in the State of Kentucky in the L. & N. case where the testimony of men connected with the Inter-State Commerce Commission put it at 11 per cent greater increase?

A. No, sir, I am not familiar with that and I do not know the conditions obtaining in the places where they spoke of, but I am absolutely sure that it is greater on the Burlington System, in the State of Missouri.

Q. Have you since the statement of the Missouri Pacific Railway Company in this case, had occasion to learn from any of their transportation officials, that they put the expense at 50 per cent greater per ton per mile for doing state than for doing inter-state business?

A. No, sir, I have not heard of it.

Q. In fact, is it your idea that you have never heard of any
907 experts who did not put it at least three times as much?

A. That is what I said a moment ago.

908 GEORGE B. HARRIS, a witness of lawful age, being duly produced, sworn and examined in behalf of the complainant testified as follows:

Direct examination by Mr. FRANK B. HAGERMAN:

Q. What is your name?

A. George B. Harris.

Q. What position do you hold?

A. President of the Chicago, Burlington & Quincy Railway Company, and of the Chicago, Burlington & Quincy Railroad Company also.

Q. How long have you been with the Burlington System of roads, Mr. Harris?

A. I was first employed as a boy, beginning forty years ago, in 1866, at Hannibal, Missouri

Q. And you have been with the Burlington System practically all the time since then?

A. I have been with the Burlington since that time, in many departments and various capacities, most all of that time. I was off with the Santa Fe for a short period, and I was with a lime and cement concern for a few months, a little less than a year.

Q. During that period of time you have occupied practically all of the positions connected with a railroad, up to your present one?

A. I have been clerk and pay master, and right of way and fuel agent, purchasing agent, passenger agent, freight agent, division assistant superintendent, division superintendent, manager,
909 vice-president and president.

Q. How many years have you been Vice-President and President combined?

A. I am not certain as to the exact date, but since about 1884.

Q. So you have been in one of the higher positions of this Railroad Company during the main years of its life?

A. I say, since 1884. I am speaking of roads that are now part of the Burlington System. Of course, the Hannibal & St. Joe when I began upon it, was not part of the Burlington System as it exists now. In about 1884 I had charge of the construction and afterwards the operation of the Chicago, Burlington and —, which was then partly owned and is now wholly owned by the Burlington System.

Q. Have you given some thought, in the light of your experience, as to the expense of extra cost of doing state over inter-state business?

A. I have.

Q. You heard Mr. Willard, give his division of the classes?

A. I think I did. I think I remember he stated there was business that began outside of the state and passed clear through the state, to some point beyond the state.

Q. What is the next class?

A. Business that began outside the state and went to some point in the state. Business originating in the state and going to
910 some point out of the state. And business having both its origin and destination within the state.

Q. I suppose it is a matter of considerable difficulty, or we would not be having so much trouble in the lawsuits, to ascertain accurately the cost, but has your experience been such that you are able to form a judgment about how much more it would cost to do that business than to do the strictly state business?

A. I have an opinion.

Q. Based upon your experience and actual knowledge of conditions in Missouri?

A. Based upon observation in Missouri, general knowledge of the business, and special knowledge of the details.

Q. Let me have what your opinion is.

A. I think it would cost from three to five times as much to do the so-called local business.

Q. You are using that term now to express the idea of state business?

A. I mean by "local" business that which has its origin and destination in the state. From three to five times as much as it costs to do all other business.

Q. Have you in your mind subdivided that in any way, or could you express it in a subdivision, how many more times the through as distinguished from the second class of inter-state business costs?

A. I don't think I have a sufficiently clear idea. I know there is

a difference. By all odds the most expensive is that just de-
911 scribed; and the next is the business which merely crosses the state line. And the least expensive is the business which makes a long march through the country, and goes through the State of Missouri.

Q. But taking it all in all, and averaging it all up, you would say three to five times is the cost to do state freight business as to do inter-state business in Missouri?

A. I have no doubt of that fact.

Q. Will you give some of the reasons you have for those views?

A. Well a considerable part, or a part of the business which is expensive is that consisting of merchandise for which a very large number of cars must be employed and hauled, and in which it is possible to place only a very small percentage of their capacity. Those cars will carry, in my opinion, from two to seven tons, when their fair carrying capacity is forty tons or more. And the stuff is all small shipments. It all has to be hauled, and in the aggregate there are a great many thousand small shipments, packages, boxes, barrels, etc., the charges on which are very small, and each one of those items must be billed, must go through all the accounting department, that there may be a record in case of a wreck or loss or damage or claim. And I have no doubt but that on a great many of those shipments the ordinary daily expenses of the Company is in excess of the gross receipts. I cannot tell just what that expense is, but it is some element in my mind in this question. The labor at local stations is employed constantly and it is used oc-
912 casionally. The facilities at local stations are somewhat expensive. The business track and all the facilities which are used entirely for local business, excluding the passing tracks, which are necessary, we will say, for the meeting and passing of through trains, are expensive. They are expensive in proportion to the business they do. In and of themselves they are not expensive, as compared with the tracks in great cities, where land is so enormously expensive, but they are expensive because the business is done at retail. There is a small amount of business in proportion to the plant, and that has some influence.

The switching of cars for local stations, both at the local stations themselves and at the terminal stations, is done at retail. That is, a car has to be picked out here and there and switched into station order; whereas, the through business use of the local stations is perhaps one movement and frequently several movements, of the switching engine, and the time of the crew which is necessary to get one car for the local station. The through business is not handled by retail but by wholesale; that is, it is hauled by wholesale and switched at wholesale.

There is a difference between the retail and wholesale principle that runs all through the local and through traffic. Now just exactly to what extent to a fraction, nobody can tell. But in my opinion there is no boubt that it has a very large influence, and I believe the full influence that I give it.

913 Q. But it is one of those things you cannot figure out and you have to base your judgment upon your knowledge of the entire situation?

A. It cannot be done mathematically, in my opinion.

The local train starts out; it has a car, we will say, for a local station. It sets out that car. It has to move other cars frequently, in order to place this car, where it will be in its proper location. The train proceeds at just as great an expense after setting out that car as before, except with a diminished load—unless as it sometimes happens, there is another to take its place.

Your local train carries only from thirty to forty per cent of the tonnage of the through trains. It cannot carry any more. The local train pays about 25 per cent, or more, in wages for the same mileage and the same service as the through train does, perhaps 20 or 25 per cent, or about that.

Local trains do not make over about ten miles per hour. They cannot make it. The local train has more trouble in making ten miles per hour than the through train has in making from 17 to 22 miles per hour.

The MASTER:

Q. Does that include stoppages?

A. Yes. You take, say a carload of freight, at a local station to go a short distance. When the business is there the agent will order a car for it. Now of course it is a difficult question, for a Company having several hundred stations, to have cars at all times at

914 all stations, because there are a great many of these smaller stations that use only a very few. Of course the car is brought from the nearest by point, but they very frequently have to be hauled for long distances and frequently they are hauled from the large terminals, where empties are constantly made, the cars being unloaded there. So it is very frequently the case that the haul of the car for a short local way haul, will be actually as great, empty and loaded haul combined, as a long inter-state shipment. That is one of the expenses necessarily incident to that class of business, and which cannot be avoided.

Now take car repairs: they are an important part of the expenses of a railroad, and car repairs being based on mileage, or largely influenced by mileage, this long empty haul that seems to be almost necessarily connected with a large part of the local business, makes the car repairs high in proportion to the short way haul that they get.

The through train does some local work and the local trains do some through work, and they are about equalized.

Q. One offsets the other?

A. One about offsets the other. For instance, a car will be hauled, where it is going within the state, more than one division, it may be hauled in the through train; but the local train picks up some business for the through train and while it is impossible to say it is exactly balanced, in my opinion it is about on an equality. There is no large credit to be given either way, in that service. I think the

thing is, that the question is in a way summed up in this prop-
915 osition: that it always costs more to do business at retail than it does at wholesale; and the local trade is a retail trade as compared with inter-state. I believe I speak of strictly local in that. This retail trade as compared with either the business that goes clear through the state on a long march, to the Rocky Mountains or the Pacific Coast, or intermediate territory, or even as to that business which crosses the state line. The state line is no barrier to commerce, of course, but it so happens that in most of these states the local interchange is done by trading towns within their own borders.

Q. So, taking into consideration the fact that there might be a state shipment carried on an inter-state train, or an inter-state shipment being part of a strictly state freight train—taking everything into consideration, your figure of 3 to 5 stands good considering the whole situation?

A. I think that is a reasonably conservative estimate.

Q. These roads that form the Burlington System, they are properly located as regards traffic—probably the best in the state?

A. The roads of the Burlington System, some of them, most of them indeed, were built many years ago and the business and industries more or less crystallize- around those stations, so I suppose it is as good as any.

Q. I assume the position of the state is almost that, but I thought I would like to have a statement from somebody upon the record, that they are properly located where traffic is situated to take
916 care of it.

A. I am not as familiar with the other lines as I am with ours, but I should say as a matter of general information that our local trade was equal to that of any of the other companies.

Q. Fixing the rate of the company is something that is in charge of your traffic department, I presume?

A. Yes.

Q. And have or have not you attempted to find the best material you could find to put in the traffic department and in charge of that matter?

A. We have. Rates are not a matter of arithmetic. Rates have been made for a great many years, as a matter of commerce. So far as I know, and believe, the western railroads have endeavored to make rates in a way to stimulate the largest movement of business. I do not want to lecture upon the general subject,—but I commenced practically on the Hannibal Road and that was the only road that reached practically from the Missouri to the Mississippi River. And I think the fact that the country has grown as it has grown, and all these industries and this business has grown up, is evidence in a way of the fact that the transportation companies have endeavored, from motives of enlightened self interest, to make the prices of transportation such as would stimulate the largest movement of business and the greatest possible development of the latent and local resources.

Q. Fixing the rates at reasonable and just amounts, and
917 under such conditions as the traffic conditions might justify?

A. I think that answering that in a different way, any

substantial extortion, such as would reduce the volume of traffic, would be unfortunate for the railroads. On the contrary, they must make such prices for transportation as stimulates it to the very greatest degree, and let everybody get in, make such a rate that both sides can make something.

Q. How about the question of your road in Missouri being maintained in the very best possible shape to conduct transportation with safety?

A. I think our roads have been at least as well maintained as the average of good practice on the best of the western lines.

A large part of each year the railroads cannot do business, and in order to do the business they have got to have tremendously increased facilities. The lines which now have only single tracks must be doubled tracked; and the equipment which is old, and there is a great deal of it, we have for instance, among our fifty thousand cars ten thousand old cars, and we tear them down at the rate of perhaps say lots of days we take down twenty-five trying to get twenty-five others. I don't believe there is any day on which we do not take down two or three and from that up to the higher number.

Q. How have you endeavored to keep your operating and general maintenance expense, on an economical basis?

A. The first element we try to provide for is that of safety.
918 And we do that as well as we can. That is the most important element and after that is provided for, we endeavor, of course, to operate as economically as we can, consistent with good service, and with that element of safety we are endeavoring to provide for.

I believe, on that subject, that it is more to the interest of the public and the public authorities, and the courts, to give the railroads, not any exorbitant compensation—I do not want that, I never want to see the rates put to a price that the public cannot afford to pay and make a good round profit—but I do believe it is to the very best interests of the public to give the railroad a fair rate of compensation and stimulate them in the very highest degree to continue this development of safety. Speed to a certain extent, but absolute safety for life and property. And that cannot be done on starvation rates.

Q. The same rule applies to the prices you pay for materials, and things like that, you try to get the best you can for the service, at the least outlay of money?

A. We try to get the best we can. Take some of the elemental things we are using. Take our ties. I was Tie and Fuel Agent one time, and I handled ties and not so many years ago. We pay to-day sixty to eighty per cent more for oak ties than we did then; and today we pay one hundred per cent more for cedar ties, when we can get them.

Q. That is because the market requires that?

A. Yes. This Company uses in the ordinary repair of
919 road, about three million ties per annum; three million pieces of wood eight feet long six inches thick and eight inches wide.

Q. While we are on that subject, something has been said some-

where during the hearing, about this thing of setting aside a fund from time to time, as part of the operative expense, to meet what you might call the ordinary wear and tear, and different things like that, so as not to have in any one year, when some appliance, either a car or a bridge or an engine, should give out, not to have to meet it all out of one year's expense: I would like to have your views as to whether that is proper railroad policy or not, and the necessity for it.

A. I have always considered it as part of ordinary prudence, for a corporation having large expenditures staring it in the face, to provide what might be called a sinking fund to meet the expenses.

Q. It means expense of maintaining, as against ordinary wear and tear, while in one sense it is a sinking fund?

A. Things go to pieces and things change. A tool which costs several thousand dollars and which we regard as a model of efficiency and economy today, is superseded tomorrow by something which is superior to it and we have got to do something else.

When I was supposed to be running errands, I used to spend part of my time loafing in the shops at Hannibal. When I went
920 into the door there was an old gentleman, a machinist, there, who had an iron on his foot,—one leg was short; and he ran a tire lathe. It was a single leg lathe and a model of beauty. People came there to see it. I was familiar with it and I admired very much the precision with which that man would put the cutting edge on the tire and take off the proper shaving, and then turning the tire around would get the correct centering and quartering, and get his attachment in shape to turn the other end of it. Well, after I had gone to other parts of the System, and come back, I went into the Hannibal Shops one day on a tour of inspection with various officials there, and the first thing I did was to look for my old friend and tire lathe. The old gentleman was gone, but I thought the tire lathe would be there, but it too was gone. I didn't say anything about it as I thought perhaps they had a better one. I went up to Brookfield and as I went into the door of the roundhouse the first thing I saw was the old tire lathe. I recognized all the old holes in the castings and the blow holes and everything else. I felt as if I had found an old friend. But I was kind of sorry to see it because I knew it was eating up money pretty fast. I said to the then Master Mechanic at Brookfield, "Mr. Wilbur, that is the old Hannibal tire lathe, isn't it?" He said, "Yes, it came up here some years ago. We can't afford to use it. We frequently have to ship tires down to Hannibal, because we cannot use it. That is a single turn lathe and a very expensive thing, but a new one would cost about
921 seven thousand or seventy-five hundred dollars and we do not feel like putting out that amount of money. We got along with it for awhile. But we couldn't do with it for very long. We had to throw it away." Now that thing cost undoubtedly as much when it was new—I don't know what it cost, but it was an expensive and a beautiful tool and yet in a few years it was of no account. We used it longer than we should.

That is the case with hundreds of thousands of dollars worth of

machinery, millions of cars and engines which are being scrapped. We find them on our repair track everywhere. And it is the case with every appliance that is used on a railroad for any purpose to produce a mechanical result and there are a great many of them.

To charge off your sinking fund, to provide for the future, in my opinion is simply a prudent provision to make to meet the necessities that we know will face us as we go along.

Q. And a necessary part of the proper operation of a railroad?

A. I consider it as much so as for the Company to provide for means to meet its mortgages, by a sinking fund for mortgages, or such other process as they may adopt; or for an individual to prepare to shingle his house next year, by doing something this year, if he thinks it is going to be necessary; or to provide for building his fences or to paint his barn and so on.

922 Cross examination by Mr. KENNISH:

Q. The last matter you spoke of, about tools getting out of date, and new or more economical tools and appliances coming into existence, necessitating doing away with the old and getting new, is a condition that applies largely in all business?

A. Yes, undoubtedly anybody that does not do it falls behind the times. The farmer has to do it with his agricultural implements and the smallest and the largest corporation, and it applies to everybody.

Q. Just like the housewife with her sewing machine?

A. Yes.

Q. Or the physician with his instruments?

A. Undoubtedly.

Q. You have to keep up with the development of science, such as come in all lines?

A. Undoubtedly.

Q. You say you have been in the railroad service and in almost every department of it, for about forty years?

A. Yes, about forty years.

Q. You began with the Hannibal & St. Joe?

A. Yes.

Q. The Hannibal & St. Joe was what you speak of now as the road doing local business?

A. Yes, the Hannibal & St. Joe was a local road. It was built, of course, to do the business in Missouri, and as the talk at
923 that time was, there would be in time a large western trade. Indeed I know we began to see — the first big emigration I remember was along about the big Mormon movement. People were going through to Utah and Salt Lake, and the Pikes Peakers.

Q. Palmyra near Hannibal was a kind of outfitting headquarters for them in the early days?

A. Yes, Palmyra, fourteen miles from Hannibal.

Q. Isn't it a fact that several other parts of what is now known as the Burlington System, were first constructed for the local traffic, just as the Hannibal & St. Joe was—taking for instance the Hannibal, St. Joseph & Council Bluffs Line. That road from Kansas

City to Council Bluffs was made up of what was originally three or four separate lines?

A. It was made, as I remember, originally, of what was known as the Missouri Valley, near Kansas City, the Missouri Valley Railway from Kansas City to St. Joseph. This is my recollection and there may be some little inaccuracy in it. Then a railroad was built or started, known as the St. Joseph and Council Bluffs Road. And that road was built from St. Joseph, Missouri, up to a point at or near Hamburg, Iowa. Then there was another road started at about the same time, the name of which was the Council Bluffs & St. Joseph—they turned the name around. They started at Council Bluffs and built down to a point at or near Hamburg. And about that time there was a consolidation and it was made the St. Joseph & Council Bluffs Road. And at a later date they consolidated, I think, with the Missouri Valley. That is a kind of
924 boyish recollection and I am not sure it is right.

Q. I think you are about right on that as far as I know.

A. You say it was built as a local railroad. It was built as a local railroad to a certain extent. Of course all railroads are built to do all the business it is possible to get to them. But there was quite a large settlement all the way from St. Joseph up to Omaha or Council Bluffs. Omaha was a more insignificant place, as I first remember it, than Council Bluffs was. It was getting to be an active place as a point on the west bank of the river, and the natural place where people started from to go west. But there was Nebraska City, which was an old town; and Brownsville and Nemaha and Rulo and some others. Forest City was quite a large place. There were some other places and landings, that I do not now remember. A great many of these people that were starting for the extreme west, farmers among them, would find that fertile valley and stop off there. And there was a surprisingly large settlement in that Missouri Valley. I know I was surprised when the trains first began to run there at the settlement and the amount of business that there was in there.

Then the Union Pacific about the same time was starting up from Omaha and they thought they would do considerable business in combination with the Hannibal & St. Joe. And in fact for quite awhile their business from Council Bluffs and Omaha was
925 done by coming down to Chicago, coming down on the Council Bluffs Road to St. Joe, changing cars, and going to West Quincy and take a ferry over the river and then getting on the train on the Chicago, Burlington & Quincy from Quincy to Chicago. And at about the time that the Council Bluffs Road which you asked me was it built for local business, that element of through business was coming in. I do not know to what extent it was considered, because I was merely a boy, hearing the gossip around the office—and I heard most of it.

Q. But the point I wanted to have you speak of, Mr. Harris, was that these roads at first as constructed, were doing simply a local traffic and after they were consolidated and connected with other

lines, then they became part of a large system, and then they were doing a through and inter-state business.

A. That is doubtless so. When I first remember the Hannibal & St. Joe they were doing considerable through business.

Q. Do you remember about the time the first attempt was made by the state to regulate the matter of railroad rates for freight and passenger traffic?

A. Well, I don't remember it. I don't remember dates very clearly, but I remember events fairly well.

Q. It has been since you have in the employ of the railroad service?

A. Oh yes.

Q. Long after you began your career with the railroads?

926 A. Yes.

Q. Do you remember about what the schedule of freight rates was before there was any state regulation on the subject?

A. I do not know. I have in my office pasted up on the wall a tariff of the Hannibal & St. Joe for about 1856. I don't know what it is. It only gives a short schedule and it does not express it in the present schedule terms. It is so much for a barrel of whisky and so much for a bundle of hardware, so much for a barrel of flour or household goods to Palmyra and so much from Barclay to Palmyra, and so much to Withers' Mill; but there are about a dozen articles of the probable necessities of life enumerated on there. That is the first tariff I ever saw.

Q. I find that the law as it was first enacted in the State of Missouri in 1875, attempting to fix railroad rates, provided or required that all railroads in the state should file a schedule of existing freight rates with the Railroad and Warehouse Commissioners, not later than the first of September of that year. That would be in 1875.

A. Yes.

Q. Have you in your possession or rather has the Chicago, Burlington & Quincy Railroad Company, one of the freight schedules of that date?

A. I cannot say, Mr. Kennish. I doubt if we have them for as long a period back as that. Papers accumulate in tremendous volume, and every once in awhile, after keeping them as long as we think they will be of any use, we destroy them, and I don't

927 know whether we have such a paper now or not. If we have it is in the records of the Traffic Department, and I assume there will be gentlemen on the stand hereafter who can give you definite information about that.

Mr. HAGERMAN: I suppose of these questions Mr. Miller can answer you better than Mr. Harris.

Mr. KENNISH:

Q. As a railroad man you have some recollection as to whether there was any radical change made in the first law enacted regulating railroad rates, haven't you, Mr. Harris?

A. I don't remember. During the time I was a freight agent I was of course familiar with rates. That is, I knew what the rates

were per hundred pounds between the principal points, where there was a heavy volume of traffic moving on our road. I knew by heart a large number of the local rates. I don't know that at that time I had very much knowledge of the relation of the rates to the law, as to whether the rates were filed with the Legal Department. That belonged to the Legal Department, I suppose.

Q. You compared the local freight traffic and the through freight traffic to a wholesale and retail business?

A. Yes.

Q. The traffic management of the railroad and the Legislatures of the states, in fixing the rate for transportation of freight through the state, recognize the extra cost for transporting freight for the short distance as compared with freight transported a long distance?

A. Yes.

928 Q. Or, as you put it, recognizes the increased cost of conducting a retail freight business as compared with a wholesale freight business?

A. Yes, I believe there is some discrimination of that kind made in all tariffs, that is, that the short tariffs are higher in proportion than the long tariffs.

Q. And that is done for the purpose of meeting the increased cost of doing the short distance traffic, isn't it?

A. I suppose that is a recognition of the fact—and I have no doubt it is a recognition of the justice of giving something more per mile for the short than the long haul.

Q. If you had any record of those old schedules, I want, if you can find any such—or if the next witness, Mr. Crosby, knows about them, I want to show whether the railroads when uninfluenced by statutory regulation of freight rates, recognize relatively and proportionately about the same difference in the increase of freight rates, according to the short haul and the longer haul of the freight.

A. I think they did to some extent, as I remember.

Q. And in about the same proportion?

A. But the railroads nor the public never had attempted to make any analysis of the subject such as has been attempted in recent years. The freight rates were never made on any mathematical scale. It could not be done, in fact. Nobody can make a mathematical freight rate. The reason being that the railroads do not start from the same places, do not run to the same places, do not

929 run in the same direction and carry the same thing. The rates have all been made by the conditions of the market, just as upon all stuffs, taken out on the auction block and sold for what it will fetch.

Q. In discussing the different items of cost that entered into the local traffic as compared with through traffic, I noticed you used the term, "local" constantly, when not reminded by Mr. Hagerman of a different meaning, as referring to way freight, freight that is carried in less than carload lots, and which has to be distributed at way stations along the line. That is the sense in which you used the term?

A. No sir, I meant local freight. I gave some illustrations, I

think, in both carload and less than carload lots. I referred to both carloads and less than carloads.

Q. But in less than carload lots, you did not refer to way freight that would be inter-state, and there would be a good deal of that, wouldn't there?

A. I had in mind the general definition, as I understood it, of the word you used here.

Q. Meaning local to be state freight?

A. I intended to use it in the same sense, you have been using it.

Mr. HAGERMAN:

Q. As state freight?

A. Yes.

Mr. KENNISH:

Q. As a matter of fact, we do know that there is a great lot of local or way freight that is inter-state freight?

A. Yes.

930 Q. And would have to be delivered regardless of the way freight at the station to which it has been consigned?

A. Yes.

Q. You know that on your line an immense lot of less than car load freight comes from Chicago, from these great department stores, to the little stations all along in north Missouri?

A. There is some. I do not think the volume of business from the great centers to the interior towns or consuming points is anywhere near as great as it is from the nearby jobbing points. The small dealer will order from the nearest point he can, because the prices are about the same. Of course, in the big places there is naturally an immense amount of business, but as we analyze it we find it is very largely for contiguous territory.

Q. But on your System you have lines running north through north Missouri and connecting with your through lines on the southern boundary of Iowa?

A. Yes.

Q. And a great deal of your through freight goes from Chicago to Council Bluffs, down on these four or five north and south lines through Iowa and into Missouri?

A. Yes.

Q. And a great deal of that business is inter-state?

A. We endeavor as far as possible to consolidate the merchandise business into carloads for districts, and we are endeavoring

931 all the time to get better results and to load the cars better so as to get the full use out of them.

Q. That freight that goes in that manner would necessarily have to be delivered on the way freight trains?

A. It would be distributed on the way freight trains just the same as if it were the same class of merchandise received from a jobber within the state of Missouri.

Q. Whether there was any state traffic or not it would have to be delivered that way?

A. Well, if there was no state traffic at all, the way freight train would not be necessary.

Q. But being a railroad, and a common carrier, you would be required to do such traffic as you were called upon to do?

A. Of course we want to do all we can.

Q. And this way freight you have to deliver and charge whatever is reasonable for the service, but you would be compelled to do the work along your route?

A. The local freight is a prime necessity for the way or local train.

Q. But trains of the class we have been speaking about, and inter-state way traffic?

A. Oh yes.

Q. On the second class of inter-state traffic we have been speaking about, that which originates out of the state and has its destination within the State, or originates within the State and has its destination out of the State, that class of traffic would require all the
932 improvements along the road, in the way of stations, and the unloading and loading tracks, if there was no inter-state traffic; all you now have on your System would be required to conduct that portion of your business?

A. A portion of it would and a portion would not. Like all other questions it is very difficult to bring it down to an exact reply, so that both you and I can both see the conditions exactly as they are. I would illustrate a little bit, to show you why I think it is difficult to make an exact and definite statement on that.

You take the merchandise business from Quincy. Quincy business is handled in Missouri just the same as business from St. Joe is handled into Missouri, on the way freight tracks. It is just across the state line. I do not now recall any other town that bears the same relation to Missouri that Quincy does. There is considerable business done, which is of course in competition with Hannibal. That furnishes a portion of the inter-state freight. That is to say, freight having its origin outside of Missouri and going into Missouri for its destination. There is a considerable small lot of freight in Quincy, but there is a lot of other inter-state freight that goes in carloads, where the cars are loaded to their capacity, that is inter-state freight. Agricultural implements, wagons, various commodities, that are produced in the manufacturing district of central Illinois and in Ohio and in the Ohio Valley and the Menominee Valley and places like that. Business which is handled in volume is
933 handled a little nearer the wholesale principle than the Quincy trade is. That tends to cheapen that class of business. And that is how you can do it at less cost.

Q. On the carload freight of the second class of what has been designated as inter-state freight, isn't it a fact that that class of freight is a large part of the carload business that is done at the small towns, and that very little carload freight business is done by one small town shipping to another small town?

A. I cannot give you exact information as to that.

Q. I will cite you some instances——

A. I think it is an element I should say that the carload business distributed on the way trains was largely local business. That is, I think it comes more from Kansas City, St. Joseph and St. Louis than from any jobbing point outside of the state.

Q. Take it on your System now in northern Missouri, and you have most of the railroad business in that section of the State, most all of the grain business that is done in that part of the State is inter-state freight that is shipped from those small stations to Chicago, isn't it?

A. Well I can't tell you. The grain business shifts. I should doubt if the bulk of the grain business from Missouri had gone to Chicago.

Q. There is a great deal of it?

A. Some of it comes here, but my impression is that you take it for any considerable portion of time and you will find
934 that the bulk of that grain business goes to St. Louis and down to the Gulf or goes to Kansas City.

Q. If it goes to St. Louis on your System, until right recently it would have been inter-state business?

A. No, sir.

Q. Wouldn't it go down on the Illinois side for a short distance?

A. No, sir. Our line on the Illinois side is a high grade line and we could not possibly afford to haul it on there. We go down on the Missouri side on practically a water grade.

Q. At this time of the year, there is a large fruit business, apple shipping. That is all, or practically all inter-state business, going to the north and to the west from Nebraska and Iowa?

A. Yes, every three or four years there is a big apple crop. The apple crop is not perennial. It seems to come and go. Some years we don't have any apples at all and another year we will have perhaps eight or nine hundred carloads.

Q. Another item that constitutes one of the main classes of freight over your line is live stock, and even since the location of the packing houses at St. Joe, there is an immense amount of live stock shipped over your line to Chicago?

A. Yes, we do a very considerable live stock business. And I should say we did at the present time certainly 25 per cent less live stock business to Chicago than we used to, and probably more than that.

935 Q. On account of the St. Joe packing houses?

A. Yes, the local industries have taken a large amount of the live stock.

Q. You do a great volume of that yet?

A. We do a large business to Chicago.

Q. You mentioned the matter of the large——

A. But that kind of business is done as a rule on through live stock trains.

Q. It is inter-state business?

A. We pick up live stock at the point of loading and take it through to destination as nearly without stop as it is possible to do it.

Q. But this second class of inter-state business you spoke of awhile ago——

A. That is one of the classes. I made that explanation because I did not know but you thought that was one class of business that got on to the local service trains. It hardly ever does.

Q. I was speaking of it in reference to the fact that in this case it has been discussed a good deal as to the necessity for having facilities to do the freight business of inter-state freight, regardless of the question of state traffic.

Q. That class of traffic would be purely inter-state traffic?

A. Yes, that is inter-state traffic. That requires nothing,
936 however, but the stockyards, to actually do the business. The stockyards and an adjacent track, which might be the passing track.

Q. And the agent, of course, to bill it?

A. It doesn't even take an agent. They can bill it from the nearest point as we do in a great many cases. Of course if there is any considerable business we have an agent, but it can be billed from the nearest point, if there is nothing else. The agent is necessitated by something else. We never kept an agent simply to bill live stock.

Q. You would be apt to have an agent where you have stockyards and from where you ship livestock?

A. No, sir, that is merely incidental.

Q. As a matter of fact aren't there very few stations where there are stock yards and live stock is shipped and no agent there?

A. We have in the western country, as an illustration, a good many places where there are stock pens and shipping places, but no agent at all.

Q. Can you name any such place in Missouri?

A. We wouldn't have it in Missouri, if there was nothing else there but live stock. The billing of live stock is an insignificant part of the agent's time, and occupies an insignificant part of his ex[illegible]. It is an important element of our business there, and that, taken in connection with other things, makes it necessary to have an agent; but for that alone we should not have an agent.

937 Q. Outside of the items I have asked you about, the freight that is shipped out of those towns along your route, what other item would you give of freight in carload lots, shipped out of one town to another, such as would be state traffic?

A. Well, such business as is bought by the local dealers from jobbers in the larger towns, where it comes in carloads.

Q. That would be freight going in?

A. Yes.

Q. I asked you to give any item of freight that was shipped out from those towns?

A. That is all covered by farm products. There might be some places where they make ax handles, or something like that.

Q. That would go in less than carload lots?

A. I suppose so. There are a few towns where they make particular things. Some man has developed a talent for making a machine that does the thing a little better than anybody else. For

instance, I remember at one of the little towns down on that Carrollton Branch there is a man that makes something, which seemed to be more useful for the purpose it was intended—whether it was a rig or not I don't know, but it goes out from there in quite large quantities, carloads occasionally. There is a man at Carrollton that makes these yard swings, and he ships them all over the country.

Q. That is about all you can name that goes in carload lots?

938 A. I could not attempt to make a canvass of all the stations.

Q. Even those that you name, these rigs and these yard swings, that which went outside of the State would be inter-state freight and would require the very facilities I have been speaking about as necessary by reason of the inter-state traffic.

A. You asked me what I could talk about.

Q. I asked you about intra-state freight shipped from one town to another, that would make necessary these facilities independent of and without considering the inter-state traffic. There is very little of that traffic done between the small towns, outside of coal being shipped in——

A. There is some shipment occasionally of live stock. That is, a man goes and buys a few carloads of beeves and ships them from one town to another. That is probably not a very large item. There are some shipments, I suppose, of coal. I do not know all of the items of intra-state freight, as you call it.

Q. But the state traffic in the matter of live stock, from one small town to another, is practically nothing?

A. It is very small, but it is just one of the items.

Q. Now how about the live stock business that your road does with the Kansas City Stockyards: Do you consider that state or inter-state business?

A. I don't know. I should have to consult a lawyer on

939 that.

Q. That is one of the great items of freight on your System, isn't it?

A. We take the Kansas City live stock at a station on our road which is in the State of Missouri, and we take it to Kansas City and deliver it to—I don't know where the point of delivery is, whether in law we make the delivery to the stockyards or whether the point of delivery——

Q. The point of unloading is really in Kansas?

A. I suppose it is in Kansas, although the stock yards run into both States.

Mr. HAGERMAN: I think they unload now at the quarantine station, in Missouri.

A. I really cannot say whether ours is Missouri unloading or Kansas.

Mr. KENNISH:

Q. Don't you think, Mr. Harris, that so far as the expenses in the way of stations and station agents, stockyards, warehouses, and such as that, that you would have to have those expenses anyway, regard-

less of the state freight, and that while the state freight should bear its proportion of it——

A. We should doubtless have to have a fair amount of facilities to do any business at all, but a very large amount of the facilities which we have are made necessary by the state business which we do, to operate the local business we do, and on which, or on a great deal of which, I doubt if we get our money back. But while
940 we practically cannot raise the price much, if at all, simply because the railroad is like a great department store—we have to sell a great many things on which we do not get our money back. We are trying to develop industries, you know.

Q. That is sometimes the case on long hauls?

A. Doubtless we have had right the converse, that have left us without any return.

Q. Take St. Louis to Omaha, I believe the rate on grain over your road is about the same from Omaha to St. Louis as it is from points in Missouri to St. Louis?

A. I think it is slightly higher. I do not remember the exact differential. But that is a fair illustration of something I said awhile ago, that it is impossible to fix the rate mathematically. Omaha is on the Missouri River and St. Louis is on the Mississippi River. That is, it is on the Mississippi and also at the mouth of the Missouri, but it is on the Mississippi River in the sense that it is a Mississippi River point; and these very rates have been made for a great many years, going to the Mississippi River as the passing point, and then going to the Missouri River as a passing point. Now the State of Missouri if not quite so is practically square, but it does not make any difference in the rate, and it is one of those commercial adjustments, that nobody can perfect, but it does not make any difference in the rate whether it goes straight across this way (indicating) or goes diagonally, although the latter is a much greater distance.

Q. But in making the cost to the railroad company, the
941 cost would be certainly much higher from Omaha to St. Louis than some point within that haul to some point in Missouri?

A. It might be and it might not be.

Q. The length of time the car would be used in the shipment from Omaha would be much longer than the length of time the car would be engaged in the other case, and the wear and tear on the engine and cars would certainly be much greater?

A. It ought to be, but as a matter of fact, it is not in a great many cases, and that is one of the things we would like to find out and try to prevent. You take a point half way to St. Louis. Here is St. Louis and here is Omaha (indicating). Say a man has two cars or five cars of grain on our road and he orders a car or cars to make shipment. We haven't any cars there. We have got to go and get them at some place where the cars are. The places we would naturally draw them from would be St. Louis, St. Joe or Omaha, because those are the large places where cars naturally accumulate. So we might have, and very likely would have, just as long a haul

and as much expense and wear and tear on the car, and the wages of employés, to haul those five cars of grain from that point to St. Louis, as if we hauled them from Omaha to St. Louis. That has actually occurred in a great many cases. We might have taken those five cars of grain, loaded at Omaha, and taken them to St. Louis, at less expense than to take the five cars from some central point to the place where they were to be loaded, and then carry them to St. Louis.

942 Q. But that might be reversed. You might have the cars at St. Joe and continue the shipment on some other line to St. Louis or Omaha?

A. It is hard to get cars from other lines.

Q. Omaha might not have cars there and you might have to send to St. Joe or some other point to get cars, as you mentioned?

A. I might find them anywhere. But the great probability in all this business is, that when you want cars you must go to the great commercial centers and haul them out and take them out and distribute them.

Q. You took for illustration a small point on the road——

A. Take a large place, take Brookfield.

Q. But the small point might be in Iowa, between Omaha and St. Joe, and the small point on the east might be St. Joe, which is a comparatively large place?

A. Yes.

Q. And the reason you gave was having cheaper transportation from St. Joe, rather than the small point in Iowa?

A. It is a reasonably safe proposition that all business, whether manufacturing, merchandising, transportation, or even banking, can be done in large volume—can be done at wholesale at less cost than at retail. That is a proposition just as good in railroading as in merchandising, manufacturing, or anything else.

943 Q. That is why we said awhile ago that in the shipment for a shorter distance the rates are made higher for that very reason?

A. Yes. We have thought as to that that even in view of the consideration that has heretofore been given that subject by the authorities, it was hardly sufficient. I admit that is a matter of opinion, but that is our opinion.

Q. That it is not what it should be?

A. Yes, on the short hauls, where we do not get our money back.

Q. In giving your estimate of the increased cost of doing what you call local or state business, it is merely or largely a guess, on your part, isn't it?

A. I don't think it would be fair, I should not want to be qualified to guess. And I should not want to make oaths to a guess, and yet it is an estimate to the extent that I cannot set down the exact elements and give you the same, so that you could take a Greenleaf Arithmetic, or Dave Ball, and prove it.

Q. But you gave the difference as from three to five times greater?

A. Yes, I thought it would be three to five times greater.

Q. Does not the fact that you make the margin three to five,

show in itself that you are not definitely or accurately informed as to what the difference actually is, and probably could not be. I am not criticising you for not giving it.

A. I cannot say actually what it is. I say I believe it is
944 that, based on such opportunities as I have had for observation, and my experience during the years I have been engaged in the business. There is some of the business that would be done very cheaply. It is simply a repetition of wholesale and retail principle. Take a business purely wholesale and apply it to this transportation problem, and it is a business that goes on a long march, in large volume. That is the wholesale trade. The more of this wholesale trade there is the less it costs you. As it descends into the retail in volume, the more it costs you. Some of this business costs us a great many times more than we get for it. It costs us—oh I presume it costs us—I would not want to say, but I think it would seem extravagant, and I try to be conservative in making it three to five. Some of that business would cost us four times and some five times. But I believe it is safe to say the minimum is three.

Q. That is the local business?

A. There is only one unfortunate thing about this whole transportation question, and that is that it is in a way impossible to put a problem down in mathematical terms, so that everybody can read the expression and prove it back and forth and say what it is. We think we know something about it, and we have been forty years trying to learn, and yet in the nature of things it is something that cannot be expressed in figures.

At this point the usual hour for adjournment having arrived, the further hearing of testimony herein is adjourned to Friday, October 26th, 1906 at 10 A. M.

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Meeting:

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Witnesses:

G. H. Crosby,	946-991
I. G. Rawn,	965
D. Miller,	1045
H. A. Gray,	1077
D. Willard (cont'd)	1112
H. Gray "	1113
J. S. Stuart,	1218
C. I. Sturgis "	1253

Exhibits offered:

Exhibit	7 (Gray)	1101
	8 (Crosby)	952
	9 (Rawn)	972
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946 CHICAGO, *October 26th*, 1906.

Met pursuant to adjournment as above on Friday, October 26th, 1906, at 9:30 a. m. in the General Offices of the Burlington Company, 209 Adams Street, in the City of Chicago.

Present: The Honorable F. L. Schofield, Special Master. Messrs. John Kennish and Rush C. Lake appeared in behalf of the State. Mr. Frank Hagerman appeared in behalf of the Railroad Company.

The following proceedings were had:

GEORGE H. CROSBY, a witness of lawful age, being duly sworn and examined, testified as follows:

Direct examination by Mr. FRANK HAGERMAN:

Q. Please state your name?

A. George H. Crosby.

Q. What position do you hold with the Burlington Railroad Company?

A. Freight Traffic Manager.

Q. How long have you been with the Company?

A. Thirty years.

Q. And in what positions?

A. Freight clerk, Assistant General Freight Agent, General Agent, Assistant Freight Traffic Manager and Freight Traffic Manager.

Q. How long have you been Freight Traffic Manager?

A. Since February 1, 1905.

Q. And how long altogether in the Traffic Department?

A. My entire service has been in the Traffic Department.

Q. So you are familiar with the entire situation? And
947 all the conditions from a traffic standpoint, in the State of Missouri?

A. I think so.

Q. In a general way, before I get down to details, I wish you would tell whether the existing rates prior to the passage of this law were in your judgment reasonable and just to the public?

A. I think they were.

Q. Were the traffic conditions such as to justify them?

A. I think so.

Q. You are familiar, are you, with the rates upon the commodities named in the Act of 1905?

A. Yes, sir.

Q. So as to those rates in existence at the time of the passage of that Act, how were they arranged as to fairness and justice, in relation to each other and other commodities, so as not to have any unjust discrimination as between commodities?

A. I think they were fairly adjusted between the rates charged for the various commodities and also for the service performed.

Q. Is that matter of the adjustment so as to avoid descrimination as between commodities a matter of difficulty, requiring painstaking care and consideration among the traffic people?

A. Yes, sir.

948 Q. It is really one of the most difficult problems you have to deal with, isn't it?

A. Yes sir.

Q. Is there any reason, if the reduction in rates made by this Act of 1905 should stand, to apprehend any increase of earnings to offset it?

A. I don't see how it would be possible to have any increase. On the contrary, a decrease would follow.

Q. What would you say as to the roads of the Company being properly located in Missouri, whether there is enough traffic, taking all kinds into consideration, to support these roads?

A. What do you mean by all kinds?

Q. What I mean is, there is no abnormal situation in regard to the Burlington Company?

A. I think not.

Q. If anything, it is better situated than any other company in the State?

A. I believe it is fully as well situated, at least.

Q. Will you explain how it is that the freight rate is not dependent upon mileage; for instance, at some point across the state of Missouri the rate is dependent upon the shortest haul, or the shortest load. And sometimes you have for a good many more miles a smaller rate: what are the conditions that make that possible?

A. The short line, you might say, fixes the rate. The short distance, because he has less service to perform. If the long

949 line wants to get in on the business he must do the business for the same rate the other people do it or else go out of business. And the commercial conditions also have a good deal to do with the relation of rates, both from a commercial center as well as the matter of long line meeting the short line competition, for example.

Q. Now let us turn to this Act of 1905, Mr. Crosby. Something has been said as to certain commodities covered by that Act. You have always charged less than the maximum fixed there?

A. There are certain commodities where we have charged less rates than that Act would permit us to charge?

Q. Yes?

A. That is true.

Q. Go through with the items and tell the Master whether it would be possible, from a commercial and traffic standpoint, or practicable, to attempt to raise those rates; and why it would not be so if that is your opinion. In doing that I wish you would take each commodity and give your opinion as to each one.

A. For example, we carry a four cent rate, or we did carry a four cent rate on cement from Hannibal to St. Louis. The rate provided

for in this bill would enable us to charge seven cents per hundred. Cement manufactured at Hannibal competes at St. Louis with cement manufactured within the corporate limits of the city. The plant in St. Louis gets much cheaper fuel compared with the plant at Hannibal. Hannibal also competes in the St. Louis markets with imported cements brought in by the Gulf to the Mississippi River and
950 up the River. Considering the cost of manufacture and this competition, we figure that a higher rate than the rate we are charging would work a hardship on the plant at Hannibal and they would not be able to get into the St. Louis market. Therefore, for commercial reasons we do not feel that we can charge the statute rate.

In other words, the Statute rate in that instance in our opinion is higher than the traffic will stand. And we could not do the business.

Q. If you would attempt on that article to raise your rate, the result is that you would not carry any of that commodity?

A. We don't think we would. We don't make the rate simply for the purpose of making it, but think the necessities of the business require it.

Q. For how long have you had upon cement, one of those commodities, practically the rate you have now?

A. That rate has been in effect since the plant at Hannibal was built.

Q. Then what is the next item in the way of a commodity, where you do not charge up to the maximum that would be authorized by the Act of 1905?

A. One large item we handle in Missouri is stone, from various points. For example, we have handled a large quantity of stone from Elsberry to Hannibal. Our rate we charge is 2½ cents per hundred weight. We could charge under the Bill four cents.

951 Now stone is produced right at Hannibal. The hills around there are full of stone. We are hauling empty cars out of St. Louis to stations south of Elsberry, and by making the rate we do it enables us to load those cars back with a tonnage to the capacity of the car, and we figure that it is necessary to make this rate to compete with the local stone at Hannibal.

Q. When you speak of that, namely Hannibal to St. Louis, in those two instances, those are just illustrations of the general idea?

A. That is just it. The idea is that we take cars into St. Louis loaded, and we have not business enough west bound, in the shape of merchandise and commodities west bound, to load all the cars that we take in there and unload. Wheat we do not load these cars with. And this commodity loads these cars to their capacity and even over their capacity.

Q. Have you tabulated in some form these commodities where the Act authorized the maximum beyond the rate that you actually charge?

A. Yes, sir.

Q. In the first column of that tabulation is the designation of the commodity?

A. Yes.

Q. And what do the next two columns show?

A. The points between which the commodities move.

Q. And you have under the heading six points taken where the main body of the stuff moved in your state?

A. Yes.

952 Q. And under the column of distance?

A. Is the distance stuff is hauled between those points.

Q. And the column "rate charged" are the rates you actually charge?

A. Yes, sir.

Q. And in the column "could have charged" those are the rates, the maximum rates, under the bill, on those commodities?

A. Under the present Act of 1905.

Q. You have given under "cement and stone" illustration, and in this tabulation you have taken commodities as between points where there is the greatest movement of it in Missouri?

A. Yes.

Q. And would your remarks as to cement and stone apply to the whole thing, without going through it in detail as to each particular item, that commercial and traffic conditions are such that the result would be that you could not handle that traffic if you did not make those rates?

A. That was our idea in making those rates.

Q. And those rates you are charging are rates that have been in effect a long time?

A. Yes, sir.

Mr. HAGERMAN: I would like to offer in evidence this tabulation.

The paper referred to is marked Exhibit 8 and is in words and figures as follows:

Commodity.	From—	To—	Distance.	Rate charged.	Could have charged.
Salt	Hannibal	Louisiana	27	3.5c	5.5
"	"	Llasco	3	$5.00	5.
"	"	"	3	5.00	5.
Cement	Elsberry	Hannibal	52	2.5c	4.
Stone	"	St. Louis	61	2.5	4.
"	"	Macon	123	5.0	5.75
"	Robertson	Liberty	5	$5.00	5.
Wheat	Kearney	Holt	6	5.00	5.
"	Bear Creek	Hannibal	6	1.c	2.
Stone	Halsey	St. Joseph	3	1.	2.
"	Yarrow	Gifford	3	3.5	5.
Lumber	Orch Farm	St. Louis	27	4.0	5.5
Wheat	Elsberry	"	61	5.0	6.
Lumber	St. Joseph	Kansas City	63	5.	6.
Flour	"	"	63	2.5	4¼
Salt	Kansas City	St. Joseph	63	4.0	6.
Stone	"	"	63	3.	6.
Lumber	Hannibal	Winfield	63	4.	9.
Lime	Tarkio	St. Joseph	67	8.	6.
Ag. Imps	St. Louis.	Annada	68	5.	6.
Lumber	Saxton	Kansas City	69	5.	6.
"	St. Joseph	Utica	71	5.	4.5
Grain	Birm'ghm	St. Joseph	73	3.	4.5
Stone	St. Joseph	Westboro	74	4.	4.5
"	Breck'rdge	Carrollton	76	3.5	6.5
"					

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Commodity.	From—	To—	Distance.	Rate charged.	Could have charged.
Lumber	St. Louis	Clarksville	77	5.	6.5
Salt	"	"	77	4.	6.5
Flour	"	"	77	6.	6.5
Lumber	Savannah	Kansas City	78	5.	6.5
Stone	Elsberry	Mexico	81	3.¼	4.¾
"	"	Canton	85	4.	4.¾
Cement	St. Louis	Louisiana	87	4.	6.5
Lumber	"	"	87	5.	6.5
Lime	"	"	87	3.	6.5
Stone	"	"	87	3.	4.¾
Lumber	Kansas City	Forest City	92	5.	6.5
Stone	Hannibal	Brookfield	104	4.	5.¼
954 Wagons	Gregory	Brewster	109	6.	11.
Cement	Llasco	St. Louis	110	4.	7.
"	St. Louis	Mexico	110	6.	7.
Stone	Elsberry	Clarence	111	5.	5.5
Grain	Hannibal	St. Louis	113	6.	7.
Lumber	"	"	113	4.	7.
Lime	"	"	113	4.	7.
Flour	"	"	113	6.	7.
Cement	"	"	113	4.	7.
Stone	St. Louis	Hannibal	113	5.	5.5
Cement	"	"	113	4.	7.
Lumber	"	"	113	5.	7.
Grain	Hale	St. Joseph	113	4.5	7.
"	Kansas City	Skidmore	122	6.	7.
Lumber	"	Langdon	125	5.	7.
"	St. Louis	Palmyra	125	7.	7.5

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Grain	Quitman	Kansas City	128	6.5	7.5
Cement	Llasco	Mexico	130	5.½	7.5
"	St. Louis	La Grange	139	7.	7.5
"	"	Monroe	143	7.	7.5
Lumber	Canton	St. Louis	146	5.	7.5
Stone	Elsberry	Brookfield	156	6.	6.5
Lumber	Kansas City	Carrollton	156	6.5	8.
"	St. Louis	Alexandria	162	5.	8.
Cement	Kansas City	Unionville	170	6.	8.
Lumber	Canton	Macon	184	7.5	8.5
"	St. Joseph	Palmyra	192	7.5	8.5
"	St. Louis	Bucklin	217	8.5	9.
Cement	Hannibal	Birmingham	216	7.	9.

Rates shown in cents are per hundred pounds.
Rates shown in dollars are per cars.

955 Q. Mr. Crosby, have you any other suggestion in connection with that matter that is not covered by what we have said in relation to it?

A. In relation to the rates that are charged as compared with what could be charged?

Q. Yes.

A. No, I don't think of anything else in connection with that.

Q. I wish you would take the question of live stock charges under the Act of 1905: under the act of 1905 what is the maximum upon live stock?

A. For 26 miles is $6. per car.

Q. How does that compare with the rate on live stock taking Iowa, Illinois and Minnesota, for instance?

A. Very much less than the rate anywhere in the country.

Q. About how much less than in those western states? Have you any figures in relation to that?

A. For 25 miles the rate in Iowa for an ordinary length of car, that is a 30 foot car, would be over double the Dickinson Bill rate.

Q. How much in dollars and cents?

A. $12.79.

Q. And in Missouri it is what?

A. $6.00.

Q. How about the horses and hogs?

A. Horses in Missouri the rate would be $6. In Iowa
956 $13.74 for the same distance. Hogs in Missouri $6, in Iowa $10.50 for the same distance.

Q. Have you the Illinois and Minnesota rates?

A. I have not the Minnesota rates here, but I have for Illinois.

Q. What is the Illinois rate?

A. Illinois rate for horses $13.49, cattle $12.35, hogs $10.68.

Q. Now I have a memorandum here of Judge Spencer's where he mentions Minnesota as $16. on horses, $14. on cattle and $14. on hogs: have you anything like that?

A. I have not the Minnesota figures here, but I have no doubt those figures are correct; in fact I furnished them.

Q. In a general way you know that Minnesota is even higher than Iowa and Illinois?

A. Yes.

Q. What would you say as to that live stock rate, in Missouri, and the Company being able to do that at even cost?

A. I don't think that covers the bare cost of doing the work.

The MASTER:

Q. What rate is that?

A. $6. on a 25 mile distance.

Q. As provided for in the Act?

A. Yes.

Mr. HAGERMAN:

Q. Would you please explain what kind of service is required from the railroad as to live stock?

A. Live stock is perishable freight. We are required
957 to get it in in time for the market. It has to be in early in the morning for example, to be placed on the market for that day's sale. We have to give a service such as we do not give on other classes of traffic. Every other kind of business has to stand on one side when we handle live stock.

Q. And the danger of accident?

A. We have to maintain greater speed.

Q. And the regulations and requirements about feeding and watering, is an additional expense?

A. Yes, sir. Where we have to do that for example, we have to unload the cattle into the feeding yards and bring those cars back, or take other cars there, or if we leave those cars there they are not in commission, not in use.

The rate itself is discriminatory in every sense. This Act would permit us to charge 65 cents per ton loaded with rock.

Q. And what would you get at — rate.

A. We can load cars with stone to their capacity. Stock cars are 50 to 60,000 pounds. That would give us—that we don't have to make any market with, no shrinkage in transit, and we don't have to stop to do anything to it.

Q. So you would get in revenue three times as much for handling rock as you would in handling this expensive commodity, live stock?

A. Yes, sir, and use exactly the same equipment in doing it.

Q. Take the next commodity you can and give as an
958 illustration.

A. Take grain. The rate on grain is five cents per hundred. We have cars that handle 60 to 80,000 pounds but we will confine ourselves to the capacity of our live stock cars. We get 60,000 pounds capacity and we get $30. a carload of grain 25 miles, compared with $6. for a carload of live stock.

The same thing is true of salt and cement. We can load those cars to the same capacity.

On lumber that is true also.

In the case of agricultural implements. The minimum provided in the Bill is 20,000. These cars will run from 25 to 35,000 pounds. On the basis of 25,000 pounds there is practically three times the revenue for hauling that car as there would be for hauling a car of live stock.

When you go to the maximum distance provided for in the Bill the disparity is just as great. The rate on grain for 400 miles is 12½ cents per hundred, $75.00 a car. Live stock for that distance would be $37.

Q. Did you give lumber?

A. Lumber is in the same category as far as the 25 miles is concerned and also the 400 miles.

The rates are all the same on all those commodities in the Bill. Grain, salt, flour, lumber, all carry the same rate.

Q. And what you have said as to the particular matters
959 would be applicable to all those commodities?

A. Yes.

Q. On the whole, the result is that for those perishable, delicate kinds of property requiring the high class service of which you spoke, you are enabled by this very act to receive from two to three times more upon other commodities than you are upon this?

A. Yes, sir.

Q. Can you give me some idea now, as to live stock, how much lower in percentage the Missouri rate under this Bill is than Iowa, or Illinois or Minnesota or Nebraska?

A. I haven't it for Nebraska.

Q. I have a letter of Judge Spencer's, which you say you gave him the information for: would that refresh your recollection so as not to take up too much time?

A. Yes.

Q. Suppose you take that and look at it.

A. (After examining memorandum.) On the 50 mile haul, for example, the rates are 53 per cent lower than Illinois or Iowa, and 55 per cent lower than Minnesota; 49 per cent lower than the Nebraska or Newberry Bill. It is about in that same ratio all the way through.

For example, the Dickinson Bill for 250 miles is 49 per cent lower than the Newberry or Nebraska Bill. It is about in that same ratio all the way through.

For example, the Dickinson Bill for 250 miles on cattle makes the rate $25. The Newberry or Nebraska Bill makes it
960 $50.23. The Iowa rate makes it $34. We do not mention the 250 miles before, but you see how the ratio runs there.

Q. Have you any figures as to the number of carloads of live stock you move from stations in Missouri to Missouri markets?

A. Yes, our records show that for the fiscal year 1906, that is, ending June 30, 1906, we handled between points in Missouri, that is, live stock that sought a market in Missouri, and live stock that moved from Missouri markets out into the State, in the form of feeders, 28,541 carloads of live stock, of which 74 per cent—I meant to say we handled from points in Missouri to the various markets, and from the various markets to points in Missouri, 28,541 carloads of live stock, of which 74 per cent was handled locally in the State. That is, it was shipped to St. Louis, Kansas City, or St. Joe; or shipped from those points to points in Missouri.

So that 74 per cent of the live stock handled by our railroads in Missouri was a local State proposition.

Q. How did that compare with Iowa?

A. In Iowa only 14½ per cent of the live stock we handled sought a market in that state.

Q. How do you account for that difference in percentage?

A. There is not the market in the State of Iowa to dispose of the live stock they raise; therefore their stock seeks an inter-state market, and therefore it is not governed by the Iowa rate on transportation.

Q. In other words, when you get to Missouri, there is a home market for live stock which makes probably the great
961 product in state traffic on your road?

A. Yes.

The MASTER:

Q. Do you deduce from that circumstance that which might be a perfectly reasonable rate in respect to that class of freight, namely cattle, in Iowa, might operate so as to be confiscatory in Missouri?

A. Yes. In other words the rates in Iowa on live stock do not handle the stuff.

Q. It is inter-state traffic?

A. Yes, and the Iowa rates cut no figure in that. The statement, I believe, has been made that our state rates are higher than the inter-state rates on live stock.

Mr. HAGERMAN:

Q. What do you say about that?

A. It may be possible that in a few instances that is the case, but it is not the rule. We haul live stock from Albany in Missouri to St. Louis, 369 miles. Our rate on cattle is $38.50 for a 36 foot car. Our rate from Murray, Iowa to Chicago, the same distance, is $48.40. From Tarkio, Missouri, to St. Louis, 389 miles, our rate is $40.70. Creston, Iowa to Chicago, the same distance, the rate *of* $51.70. Maryville, Missouri, to St. Louis, the rate is $39.60. Brookfield to Chicago, the same distance, the rate is $46.20. Burlington Junction in Missouri, to St. Louis, 394 miles, the rate is $40.70. Wicks, Iowa to Chicago, the same distance, the rate is $48.40. Lathrop, Missouri to St. Louis $32.45, 304 miles. Albia, Iowa, to Chicago, the same distance, $48.40.

The MASTER:

Q. Are those Missouri rates you are now quoting the rates
962 you are now charging, or have you reference to the Bill?

A. Those are the rates we are charging to-day.

Mr. HAGERMAN:

Q. Have you that matter in tabulated form so you can submit it as an exhibit?

A. Yes, sir.

Q. If you will do that I will be glad to have you do so.

A. I have made no comparison in this sheet of the shorter distance because we have not the shorter inter-state distance.

Q. In handling live stock you have to haul to a longer market?

A. Yes. I have some shorter distances where I did not figure St. Louis to Missouri River as well as St. Louis markets, to show that the rates for the longer haul are higher per ton per mile than for the shorter haul in Missouri on inter-state shipments. But they are shorter distances.

From Iatan, Missouri, to St. Joe, our rate on cattle is $10.30 for a thirty foot car. The Iowa rate for the same distance is $12.35.

Mr. KENNISH:

Q. Under the existing law?

A. The rates charged to-day. That has no reference to inter-state

freight. But it shows the difference in rates in Missouri and how our rates compare with the rates in Iowa for the same distance.

963 Waldron to St. Joe the rate is $11.40 and the Iowa rate is $15.97. Liberty to St. Joe our rate is $15.64 and the Iowa rate is $18.40. Tina, Missouri, to St. Joe, our rate is $20.44, the Iowa rate is $22.76.

Clarence, Missouri, to St. Joe, the rate we charge is $24.84, the Iowa rate is $24.69.

Mr. KENNISH:

Q. In speaking of "our rates" you are not speaking of the Statutory rates?

A. No, sir, the rates charged by the Railroad Company. I am simply comparing the rates we actually charge with the rates in Iowa for the same distance.

From Bogard, Missouri, to Kansas City, our rate is $20.44. The Iowa rate for that distance is $24.69. Annada, Missouri, to St. Joe, our rate is $27.14, the Iowa rate is $32.92.

Now for 300 miles:

Grove, Missouri, to Kansas City, $27.14 is the rate we charge. The Iowa rate is $27.38.

Q. The same distance?

A. Yes. Another illustration is Stewartsville to St. Louis, $26.22, and the Iowa rate is $37.28.

In this connection I will say in regard to the St. Louis rate from that section of the country, they carry to East St. Louis out of which we pay bridge toll and the charge for delivery to the Stockyards Company, so the rate is really $4.20 less than the rates I have given. That is the privilege the Missouri shipper has, to take his

964 business across the river at our expense.

Q. So it is not true, as contended by some people here, or intimated by some of the questions, that merely the fact of state as distinguished from inter-state traffic makes the difference in rates?

A. No, sir.

Q. What is it makes the difference in rates?

A. It is the conditions that govern the traffic. We are endeavoring to get as good rates as we can, and move the business.

Q. The movement of the business is a very large element to be considered?

A. Yes, sir.

Q. The distance carried is an important matter?

A. Yes, sir.

Q. And the volume of business is an important matter?

A. Yes, sir.

Q. Merely the accidental running of a state line does not determine the question in any way whatsoever?

A. No, sir, it has nothing whatever to do with it.

The further examination of Mr. Crosby is temporarily suspended in order to take the testimony of Mr. I. G. Rawn.

The remainder of Mr. Crosby's testimony will be found on page 697 of the record.

965 I. G. RAWN, a witness of lawful age, being produced, sworn and examined, testified as follows:

Direct examination by Mr. FRANK HAGERMAN:

Q. Just give your name in full, please?
A. I. G. Rawn.
Q. What is your business?
A. General Manager of the Illinois Central Railroad Company.
Q. How long have you occupied that position?
A. About three years, or a little over three years.
Q. And you are located where?
A. In Chicago.
Q. What has been your railroad experience in a general way?
A. I have been in the railroad business about 25 years, wholly within the Operating Department. As Train Despatcher, Train Master, Superintendent, General Superintendent and General Manager.
Q. And upon what roads?
A. On what is now a part of the Big Four. The Kentucky Central, Chesapeake & Ohio, Baltimore & Ohio and the Illinois Central.
Q. Mr. Rawn, we are dealing in this case with the question of moving state traffic in Missouri, over the Burlington System, as
966 distinguished from Inter-state traffic, and for the purpose of my question I will call attention to a division of the business as given by Mr. Willard, I think:

There are three classes of business; first, that inter-state business which originates outside of Missouri and crosses the State, ending in some other State; you might call that through inter-state business. A second or middle class, also inter-state business, which originates outside of Missouri and runs into Missouri, or originates in Missouri and runs outside of Missouri. Then there is the purely State business, that which originates and terminates within the limits of the State.

You will observe by that that there is not the division that is ordinarily termed "local or through business" in railroad parlance. Can you tell us how much more, in your judgment, if any, it costs to conduct the purely State business than it does the inter-state business, either or both classes, and any reasons you have for it and any investigations you have made upon the subject?

The MASTER:

Q. How much more it costs: do you refer to ton mile or to the amount of earning a dollar?

Mr. HAGERMAN: I am asking him simply from an operating standpoint, just the actual cost in his judgment, on the theory that there is no way of ascertaining it exactly.

The MASTER:

Q. What is your unit?

Mr. HAGERMAN: Any unit on earth, for the purposes of this ques-

tion. I will follow it up and ask him whether he figures it out
967 upon the ton mile basis. My notion about it is that it is a question of experience, essentially; and the very reason we are permitted to ask these questions, the Court says, is that it is more or less a system of averages.

The MASTER: Your question is "how much more it costs to do purely state business than it does to do inter-state business." How much more what costs? The entire business or per ton, or what. I am unable to ascertain from your question.

Mr. HAGERMAN: How much more it costs to do entirely state business than it costs to do the other business.

A. In the first place I have no familiar knowledge as to the conditions in Missouri. I am not familiar with the conditions locally or otherwise, in the operation through the State of Missouri.

Mr. HAGERMAN:

Q. Which is almost a necessity?

A. It is a necessity if I deal in my testimony with the subject per se, as you put it. I take it I would not be competent to deal in an expert way with local conditions as they might pertain to operation in and through the State of Missouri. It would seem to me that the value of my testimony, if it has any, would be that of dealing with the general subject as it appertains to railroad operation between what I think I would more properly term local and through business, handled by railroads, because I am not familiar with the conditions in Missouri.

Q. Let us have your judgment first as between local and through business, in railroad parlance.

A. In dealing with that it would be from the standpoint
968 of operation.

Q. Very well, give us that.

A. In my experience and the basis upon which we predicate our cost of operation, the cost of handling local freight, as we term it, in comparison with that which we term through freight, and in accordance with our statistics in the matter, we find that the direct train cost for exclusive train operation, which I shall endeavor to deal with as one item, and with other items separately—the direct exclusive train cost, of that which we term local freight, is about three and a half times that of handling through freight. That is, I reiterate, what we term exclusive train cost, or direct train cost.

Q. And that you ascertained by devoting special study to it and figuring on the same, did you?

A. That is the basis upon which we work. The basis which we assume and the basis upon which we predicate our operations.

Q. Go on then to the additional matters.

A. We regard and so consider in our matters of operation, that in addition to the direct train cost there are additional costs and expenditures in the handling of local freight which do not pertain to through freight. For instance, a local freight train is, as a general proposition, almost universally scheduled for a less number of miles per day, or a shorter distance than that of through freight. That

is made necessary because of the local work at the station,
969 switching, loading and unloading of less than carload freight, and so on, which consumes time; hence the necessity for a shorter mileage than that of the through freight trains, which take their full train load at their originating district or divisional point and carry it to the next district or divisional point. Therefore, in consuming more time that necessitates the consumption of more locomotive power. In other words, the locomotives, which includes of course the engine crew and train crew—the locomotive makes perhaps one-half the mileage on those than it does on the through freight engine. Hence we calculate there is an additional capital investment in the local freight engine because it requires a larger number of them to make the same mileage as in through freight service.

That is also true of cars in the local freight service which necessarily make a lesser number of miles than those in the through freight service. Hence the railroad is deprived of the use of the cars in local freight service, to a greater extent than they would in through freight service.

Q. Can you make any estimate in the difference in hours of service as between the engines and cars, through and local?

A. I think I said that as a general proposition the through freight engine makes about twice the mileage of the local freight engine.

Q. And what about cars?

A. It would be a difficult matter to estimate the difference
970 in mileage of cars, excepting that I might say that a greater difference would apply than with the locomotive.

I might illustrate that by saying that cars in the through freight service, as a general proposition, make longer runs, they contain freight destined to longer distances. Hence, after being loaded they will go to a destination possibly several hundred miles distant, while the cars in local freight service will go over a district of probably fifty, sixty or eighty miles for the day. Then they of necessity are detained in being unloaded and reloaded, and therefore the mileage made by cars in the local freight service, or less than carload service is another term for it, is about 33 per cent less than the loading in cars in what we term through freight service. So the full efficiency of the car is not obtained in local freight service, but of course it is a necessity to use it in order to handle that character of business.

Any additional expense necessary in the operation of the local freight service, is train service. A large proportion of the station service, station agents, clerks, laborers and so on are made necessary by reason of the local freight, the through freight trains not stopping at many of the local freight stations. Therefore, the force maintained at those stations is made necessary to a very large degree because of the handling of local freight, doing the business in the town. The facilities at the local station-, way stations as we term them, such as platforms and buildings and freight houses, team tracks
971 and business tracks, and so on, are made necessary by what we term local business. All those things enter into the cost of handling local freight.

Q. And all in addition to the estimate of yours of three and a half times more for the exclusive handling and moving?

A. Yes, that is as I said before, what we term exclusive train expense.

It is also true that relatively there is more switching in the yards of local cars than of through cars, because of the breaking of a trainload. Not moving a carload but breaking a carload, more frequently than in the through service. Those are the elements that in my opinion go to increase the cost of local as over through business.

Q. As illustrative of your idea, did you make up a brief statement, taking as a basis the local train district and a through train district upon your road?

A. I did.

Q. Is this your statement (handing paper to witness)?

A. That is it or a copy of it.

Q. Is that correct?

A. Yes.

Q. I will be glad to have you attach that as an exhibit and as part of your testimony.

A. Yes.

Q. That is illustrative of the basis upon which I formulate my opinion.

972 The paper referred to is marked Exhibit 9. It is in the words and figures following, to-wit:

973 COMPLAINANT'S EXHIBIT 9.

Comparative Cost of "Local Freight Train Operation" and Through Freight Train Operation."

Basis: Through Train District—Centralia to Mounds.
Local Train District—Centralia to DuQuoin—DuQuoin to Mounds.

Average Tonnage of Freight Trains, Fiscal Year 1906:

Fast Freight Trains		871	Tons.
Slow	"	1078	"
Mixed	"	186	"
Local	"	390	"

Train Operation Cost (Exclusively):

	Local, 1,000 train miles.	Through, 1,000 train miles.
Wages—Enginemen	$100.00	$67.60
" Conductors and 3 brakemen	172.20	(2)83.70
Roundhouse—Labor	20.00	10.00
	$292.20	$161.30

The cost of Miscellaneous supplies including coal, about the same; through train handling more tonnage, local train doing switching and station work.

On basis of tonnage statistics for the fiscal year above indicated it cost in local service (exclusive of overtime) 80 per cent more to handle 276% less tonnage than handled in average through trains; in other words, in train operation expense exclusively it cost 356% more to handle freight in Local service than in Through service.

In addition to this the through train covers the district with one engine in one-half the time two engines usally cover the dis-
974 trict where turn-around runs are involved; in other words, Through service requires 7½ engine hours service as against 14 hours in Local service, and in this manner comparatively consumes much more power.

The average tonnage per car in Local service is about 33½% less than the tonnage per car in Through service, thus requiring in Local service one-third more car capacity to handle same tonnage handled in Through service, which, in addition to the value of the car equipment, means that in Local service the percentage of revenue tonnage to tare tonnage (weight of cars) is much less than in Through service.

The switching expense at initial terminal is much greater per ton in Local service than in Through service on account of the shorter haul in Local service; i. e., the switching expense per car at an initial terminal in making up local and through trains is about the same, but the local shipment may be hauled only 20 miles as against 200 miles in through service.

The greater labor at initial terminal per ton mile is also much greater in Local servcie than in Through service for the same reason given in regard to switching expense.

The employment of intermediate station labor is largely consequent upon local train service.

The liability of injury to train employés is greater in Local service than in Through service on account of injuries incident to station switching, and loading and unloading local freight at stations.

975 The construction and maintenance of additional side track facilities, platform facilities, etc., at small intermediate stations are largely consequent upon local train service.

It is necessary in many instances to construct and maintain roundhouses, turn-tables, etc., and maintain roundhouse forces at intermediate points where locals turn.

It is necessary in some cases to construct and maintain additional water supply facilities in order to meet the requirements of local train service.

976 Q. That is in very compact form.

A. I regard it as so, and it may be of interest.

Q. As I understand you, not being familiar with the local conditions in Missouri, you would not want to express any opinion as to the difference between the doing of purely State business and interstate business?

A. I would not consider myself competent to give an opinion that was of any value on that, not being familiar with the State of Missouri.

Q. And the opinion you have given is a comparative statement of what is known as the local and through business?

A. Yes, sir, I would want it to be regarded as such and not what is purely state or inter-state business.

The MASTER: The ratio of expense based purely upon the consideration of handling and moving the cars you make 3½?

A. Yes, sir.

Q. You have added a number of elements additional to the considerations which entered into the estimate which pertains only to the local and way freight?

A. Yes, sir.

Q. Now have you the percentum, when you consider those last elements with the others, the total percentum of ratio?

A. No, sir, and many of them it would be very difficult to determine accurately in figures. It would be an approximation, after all.

Mr. HAGERMAN: That would be a matter dependent upon local conditions also?

977 A. Wholly so. If I may take some of your time to illustrate; the conditions at the different stations are different, and necessarily so. It would be necessary after all to reach an arbitrary division between expenses at station A, if you please—I say an arbitrary division between that which was necessary to conduct through business and that necessary to conduct local business at that station, as well as all other stations. But I say that based upon long experience, a large part of the expense incident to what we term way stations, is made necessary by reason of the local business. As you can well see, we start through freight trains and they go over a division without making any stop, except perhaps for water and coal and that sort of thing.

The MASTER:

Q. But you have no opinion as to the relative cost of transporting through and local freight, taking into consideration all the elements that should enter into that percentum?

A. I would not attempt to give you definite figures. I would say, that in addition to the three and half times which I claim is the direct train expense, it would augment those figures to a very considerable extent, and I would want it understood that in making my statement of these various items, it carries with it my opinion that the three and half times is augmented to a very considerable extent by reason of these many things I have mentioned. But I would not attempt to give you accurate figures. Does that answer your question, your Honor?

The MASTER: Yes.

Cross-examination by Mr. KENNISH:

Q. The comparison you have made between local and
978 through freight would apply equally whether the local through freight was state or inter-state?

A. Yes I should say so. I am dealing wholly with the local and through, separately.

Q. You do not attempt to express an opinion as to the increased cost of state traffic whether local or through, as compared with local and through inter-state traffic?

A. No, sir, I would not attempt to express an opinion on that.

Q. And you say an expert would not be prepared to give an intelligent opinion as to the cost of doing the purely state business, unless he had a knowledge of the conditions under which the freight was shipped in the state under consideration?

A. That would be my opinion—at least I would not want to attempt to do so without being fully familiar with the conditions.

Q. Now in making your estimate as to the increased cost of local over through freight, you stated that the direct and exclusive train cost would be three and a half times in the case of local as compared with that of through freight: what items would you include in the term "direct and exclusive train cost"?

A. I would include the wages of the engine crew and train crew.

Q. That item would be considering that you said that the through train would make about double the mileage, that
979 item would be approximately increased double, would it?

A. Very nearly so.

Q. What other consideration?

A. Direct train expense we regard as the wages of the train crew, the engine crew, fuel, etc.

Q. The train crew includes all the employés that are needed in handling that train, doesn't it?

A. Yes.

Q. Say that was double, as we have spoken of that, what other item would you include?

A. I don't know as I understand your question.

Q. Your answer to Mr. Hagerman's question was that the direct and exclusive train cost of the local freight would be three and a half times that of through freight?

A. Yes.

Q. I asked you to give the items that you would include in the term direct and exclusive train cost.

A. I was endeavoring to do that.

Q. I know, and we have spoken of the one item, which was the increased cost of the wages of the crew that handle the local trains: now I ask you for the next item.

A. The items of exclusive train cost that I have in mind and which I included, as I said before were the wages of the engine crew, train crew, fuel cost and train supplies.

Q. Now let us take them one at a time.

980 A. That simply constitutes the item of direct train cost.

Q. After the cost of the crew, you next mentioned the fuel cost?

A. Yes.

Q. Do you state that the fuel cost on a local train would be three and a half times that of a through train on the same mileage?

A. Yes. And I may get this more clearly in the minds of all concerned, so far as my testimony is concerned, and that is so stated

in the paper I have submitted (indicating exhibit). In arriving at the three and a half time cost it is shown that in order to handle in equivalent tonnage on a thousand mile basis, which is one basis we use for computing cost, the expense of handling an equivalent tonnage on local as compared with through freight is three and a half times in direct train expense.

Q. I understood your answer, but I was getting at the items which you took into consideration in arriving at that result.

A. The items I have given you are what I used.

Q. I was cross examining you as to each item. You just gave the result in answer to Mr. Hagerman, without giving what would enter into that computation.

Now what I asked you last was as to the matter of fuel and the increased cost of fuel in handling a train that carried local
981 freight as compared with a train that carried through freight?

A. That is one of the items included in the cost of train cost being three and a half times.

I want to digress a moment and call your attention to the manner I arrived at that. Based upon the same number of tons handled, the cost in handling it on local trains is three and a half times that of through trains.

Q. When I ask you if a local train would consume three and a half times the amount of fuel in a given distance, you would say that you would have to take into consideration the greater tonnage carried by the through engine?

A. Yes, sir, I would.

Q. The engine alone, handling a local train, would not take three and a half times the fuel that an engine going the same distance on a through train would consume?

A. No, sir. It would take considerably more fuel, because of the many stops they make in the same mileage.

Q. But the main difference you make in the item of fuel would be on the ground of tonnage?

A. Yes, sir, on all items. But eliminating tonnage from the question entirely, and taking it for the equivalent distance, the cost of local freight over through freight is perhaps twice as much, without regard to tonnage. Now if you take into consideration the tonnage——

Q. Before you do that, isn't it a fact that the through trains run at a great deal higher rate of speed than the local trains?

982 A. On the contrary they run at a lesser rate of speed between stations.

Q. The time is lost by local trains on account of the stoppage at stations?

A. It may be termed a loss, but that is provided for in the schedules.

Q. The greater time you say it takes the local train to make time than the through train?

A. That is what you say is time consumed at stations.

Q. What is next?

A. Those are practically the items.

Q. Fuel, and the extra cost of train crew?

A. The wages of the engine crew, the wages of the train crew, fuel, and all other train and engine supplies. They are very numerous as you may know. Then there is sand and water.

Q. Do you speak of an engine crew and a train crew as separate crews?

A. In railroad parlance we call them engine and train crews. The engineer and fireman and the conductor and brakeman constitute the crew. On through freight trains there are two, and on the local trains one brakeman. The wages of the engineer and fireman, conductor and brakeman per mile on local freights are greater per mile than on the through freight.

983 Q. Because of the increased amount of time it would require the local crew to make the same distance: is that it?

A. Yes, or more properly speaking because of handling less than car load lots at stations. They load and unload freight and do a great deal of switching at stations.

Q. You said another item would be engine and train supplies: don't give them all, but give a few as an example of what you mean by train supplies.

A. What we said awhile ago applies; the supplies consist of fuel, water, sand and oil.

Q. You said that before?

A. I will add oil. Lubricating oil. And probably what are called train supplies.

Q. What would that be?

A. Oil and waste and oil for lamps and a few other small items.

Q. It would not take much more for a local than for a through train of those items?

A. It goes back to the proposition of the local train consuming more time to make the same number of miles and hauling a lesser tonnage with the same motive power than they do on the through freight trains, and hence the increased cost of local over through.

984 Q. You gave as one of the additional items, in addition to direct and exclusive train cost the matter of less mileage made by the local per day as compared with the through trains, didn't you?

A. I said the railroad got less mileage out of the local engines than the through engines, and hence their capital investment is greater in the supplying of locomotives to do local freight business than in doing through freight business.

Q. Wouldn't you consider that item in the direct and exclusive train cost?

A. Not at all.

Q. You did not consider that?

A. Not at all.

Q. You said it would also require a larger amount of station service to handle the through freight?

A. To handle the local freight.

Q. Yes, local freight as compared with through freight?
A. Yes.
Q. How much do you think it would require in addition
985 to what would be necessary in handling the through freight?
A. I made that answer to the Court a moment ago, that I would not attempt to give any figures. I said I gave it as my opinion based on long experience, that there was a very material part of the station expenses, at all way stations.
Q. Take the situation now at a town of, say, two to three thousand population?
A. I think I shall decline to——
Q. What additional service would you have to have at such a station by reason of the handling of the local traffic?
A. I think I shall decline to go into figures on that. I have made the general statement that the additional cost would be material.
Q. You would have to have a station agent, anyway, regardless of the local traffic, wouldn't you?
A. At a town of that size, yes.
Q. And you would have to have a Helper and assistant—you have at all stations?
A. No sir.
Q. At a station of that size you would necessarily?
A. No sir; because if there was no local business at a station of that size, there would be no freight to handle.
Q. You think one man could do all the business required to be done by a station agent at a town of that size?
986 A. If there was no local business, but that is not a reasonable supposition, as the town could not exist without local business.
Q. We are speaking of increased cost by reason of the local traffic?
A. The necessity exists because there is and always will be necessity for local traffic or else the town could not exist.
Q. You are giving that as a reason for the increased cost, and I want you to give the reason why the increased cost should be chargeable to local traffic.
A. I say a large part of that cost is chargeable to the local traffic.
Q. What percent is that?
A. I told you I would decline to deal in figures in that cost, because I have not made them up.
Q. You must have some idea in your mind to give an opinion?
A. I have not. My experience in railroad service would warrant me in making a general statement of that kind.
Q. You must take into consideration the increased work necessary to be done by reason of the local traffic at that place, before you give any opinion?
A. Exactly. And I do.
Q. That is all I asked you to give.
A. I understand, but permit me to answer in my own way. I say

that a large percentage of the cost at such a station as you
987 cite, one of two or three thousand people, would be contingent and made necessary by reason of the local business done there.

Q. Now will you give The Master the number of employees at a station of that size, on your line—you are speaking about your railroad when giving all your testimony here today?

A. I am speaking of my general experience, yes.

Q. How many employees would be necessary to do all the business at a station of the size we are speaking of?

A. That is not competent, because it would fluctuate. One town of two or three thousand people might have extensive manufacturies, and another might have——

Q. We are speaking of average towns as you find them throughout the country.

A. I don't want to be disrespectful to you or to The Court, but I shall be obliged to decline to enter into figures that I would not feel that I had some accuracy about. I reiterate and make positive my statement, that at any station of that character a large percent of the cost of that station is made necessary by reason of the local business. Now of course I do not want to contend with you upon this matter, but I am not going to go into figures.

Q. I am not contending but just want to bring out the facts.

Take a town of two thousand population, where there are no unusual conditions such as factories or anything of that kind,
988 and what I want you to state is, what would be the usual number of employés at such a railroad town, on the railroads generally?

A. I will say again, it varies to such an extent that there is no value in saying what one place would be.

Q. You decline to give any opinion on that at all?

A. I do not decline to give an opinion, but I decline to give figures.

Mr. HAGERMAN:

Q. Because it varies so that you cannot?

A. I might say, if it will be of any value, that at a station such as you mention, there would be an agent, a telegraph operator, and one, two or three housers. That would be contingent wholly upon the character of the business there. For instance——

Q. You need not go into it any further if you are not informed so you can give an opinion as to the number of employees at such a place.

A. I do not want to be understood as saying that I am not informed, but I am not informed so as to give you and The Court figures. I do not want to give you anything but what I feel is correct.

Q. Could you give an estimate of the percentage of interstate freight as compared with state, local way freight?

A. I have not gone into that matter at all.

Q. So you are not giving any testimony as to the excess cost made necessary by reason of the local, intra-state freight?

989 A. None whatever.

Q. Your testimony goes entirely to what is termed local as compared with through freight?

A. Wholly so.

Q. And the local freight may be state or interstate freight and the through freight may be state or interstate freight?

A. That is correct.

Q. On your line of railroad, do you take as your basis of computing the cost of transporting freight, what is known as the tonnage system, tons per mile?

A. I don't know that I exactly understand you, but if I do, I would say yes. Pardon me, but I will ask you to be a little more definite about that. I do not quite follow your question.

Q. The question is whether or not you have got a system of ascertaining the number of tons per mile and basing the cost upon that system.

A. Yes, that is correct.

Q. Rather than upon the earnings?

A. It resolves itself into the other, after we get through with it, but we do compute our cost upon what is called a ton mile basis.

Redirect examination by Mr. HAGERMAN:

Q. Irrespective of the question of revenue at all?

A. Yes.

990 Q. The question of revenue comesin at the other end of it?

A. Yes.

991 At this point the examination of the witness, George H. Crosby, was continued from page No. 673.

Mr. HAGERMAN:

Q. What is that paper you now have?

A. The number of cars of live stock handled from points in Iowa and Missouri and also the number of head of live stock in the states of Iowa and Missouri as shown by the last United States Census.

Q. You have already given the percentages as to the amount of local business done in the respective states?

A. Yes sir.

Q. What is the result now as to the census, in the comparison of the states of Iowa and Missouri as live stock states?

A. The Census shows that Iowa has 17,434,665 head of live stock in the form of cattle, horses, sheep and swine, while Missouri has 9,889,671 only, or Missouri has 57% only of the live stock that Iowa has.

Q. Now, Mr. Crosby, in referring to the subject of the live stock being a high class freight, requiring the most expensive and best service, and yet the bill only authorizes a charge of much less, I want to ask you as to the value of a shipment.

Take a car of horses as compared in value to a car of lumber or grain, how do they compare?

A. Ten times as much.

Q. So that is another evidence of the discrimination of which you speak?

992 A. It is still another point in connection with that, that the other commodities you can load the cars somewhere near their capacity and you cannot do that with live stock. You cannot get 50% of your capacity into the car.

Q. What other element is there in the way of discrimination as between those commodities, based upon the idea of more danger to accident from carrying live stock than freight which is dead freight, from which you can get as much more?

A. The live stock is always handled in trains at greater speed than dead freight. If there is a wreck or anything of that kind, the live stock is more liable to damage. The insurance value, of course, that the carrier has to undertake is greater than on almost any other commodity which we handle.

Q. There is one other element to which you made reference, with which I would like to have you deal a little more at large, and that is the necessity when a farmer ships his cattle, of getting them to the market speedily in order to get the benefit of a market?

A. We have to do that. The market closes comparatively early in the day. If you are in too late for the market with live stock, it has to be held over at an additional expense to the shipper. And there is generally a shrinkage in the matter of weight. There may be fluctuation in the market, to-. As a rule where we lose the market through any fault of our own, we are generally presented

993 with a claim for damages.

Q. And have to pay it?

A. Yes, have to pay it.

Q. I wish now you would go into a little more detail and show what the effect upon interstate rates could or might be by the fixing of a low state rate upon commodities, as applicable to your road, which I understand, is the shortest East and West road in the State?

Mr. KENNISH: We hardly think that would be competent. I don't want to be objecting, but it seems to me the matter of interstate rates as affected, either by the state rates, would be hardly a proper subject of inquiry at this period.

Mr. HAGERMAN: Probably not in itself, but it is an element which should be considered.

The MASTER: If there is no objection to it, go on.

Mr. KENNISH: We make formal objection. We don't want to take up any time, but we do not think it is admissable, and do not want to appear as consenting.

The MASTER: As I remember, there is nothing in the Bill complaining that the reduction of the local or State rate would affect the through interstate rates.

Mr. HAGERMAN: Not as an independent claim.

The MASTER: How far that question, outside of the specific allega-

tion in the bill, might affect the other questions brought out in the bill, I am not at this moment able to determine, and assuming that it may bear some relation to other questions which are
994 brought forward in the Bill, I shall over-rule the objection.

A. The rate to and from the territory West of the Missouri River and the Mississippi River, are based as a rule upon the combination of locals; that is, a combination of the rate to the Missouri River with the rate again from the Missouri to the Mississippi River. Establishing the Mississippi rate on that basis, there is a system of differentials, based upon what is supposed to be commercial conditions, as well as the extra cost of service and the extra haul as between the Mississippi River and Chicago. Coming to the rate from the Missouri River to St. Louis, for example, and that added to the rate from Hastings, Nebraska, to the Missouri, River, produces a rate, say take the rate on wheat, of 20 cts. for example. That combination makes a rate of 20 cts. to St. Louis. The differential rate would make that rate to Chicago 3 cts. higher or 23 cts. Any legislation that affects these rates to the River reduces the rate not only to that point but to Chicago, Peoria and so on through to the Atlantic sea-board.

The reduction of live stock rates here would reduce all the rates on live stock from the territory West of the Missouri River to the Mississippi River and Chicago.

This is also true as to agricultural implements, as to the rates West-bound. The rates between the River under this tariff would be 15 cts., for example, from Hannibal to St. Joe. That is under the Dickenson Bill, the Act of 1905. That, therefore, would
995 be used as the basing rate. The basing rate today is 22½ cts. per hundred and the rate of 15 cts. from Hannibal to St. Joe would make the rate from St. Louis to St. Joe and St. Louis to Kansas City and Hannibal to Kansas City, under the commercial usages of today. You cannot maintain a higher rate from St. Louis than you do from Hannibal. If we did all the traffic from the Central States territory and the Atlantic sea-board would be moving through Hannibal, and the St. Louis shipper or manufacturer would be at a disadvantage in competing with the man from Columbus, Ohio, who made agricultural implements, wagons or machinery.

Therefore, that reduction between Hannibal and St. Joe would necessitate a reduction between St. Louis and St. Joe and Kansas City. You have got to make the reduction in the through rate, because the through rates are made on the combination.

After bringing about that result, it goes further North, across the State of Iowa. Why? Because the railroad company that did not have a mile in Missouri was not affected in any way by the action, except as it reflects upon them, would be compelled to meet those combinations. The Chicago Northwestern would be compelled to establish the same rates from their Mississippi River point, Clinton, Iowa. They would have to make the same rates at that gateway as were made from St. Louis at the Hannibal gateway. And the

Atlantic Sea-board business would move through the lower gateway if they did not.

Through its upper Missouri River crossing the territory in Dakota would be more or less affected.

996 The Illinois Central, for example, would have to reduce their rates to Sioux City, because a certain territory in the section West of the Missouri that would be served through Sioux City as well as Omaha, and certain sections in Nebraska served from Kansas City, St. Joe and Omaha.

And as you go further North and West they always have to be in relation. You cannot get away from it.

So the effect of this reduction of the rates between the rivers go straight North and it would affect the rate to Butte, Montana. It would compel the railroads via St. Paul to meet the rate made at the lower gateways, or go out of the business.

The railroad running from Chicago to Council Bluffs and thence West to Hastings, Nebraska, could not consent to an adjustment of rates through Hannibal and St. Louis by St. Joe or Kansas City or Hastings that they could not duplicate. It would be either that or quit the business.

The jobbing and distributing towns in the intermediate territory would at once demand readjustment of their rates to enable them to compete.

Kansas City wants the privilege of competing with Chicago, Omaha, and the other towns come in with the same proposition.

A disturbance of the rates between the Missouri and Mississippi Rivers has its affect on the entire Western Territory.

Q. The result of your testimony is, that this live stock rate
997 under the act of 1905 is not only discriminatory as to other commodities, but destructive of the rate situation, and taking the whole thing into consideration, your entire knowledge of all the conditions in Missouri, I understand it is your opinion that it is absolutely requiring you to do it at less than cost?

A. Yes.

Q. And it is absolutely impracticable, from a traffic and commercial standpoint, to attempt to make that up, if it could be made up, by increasing the present rates on other commodities?

A. You cannot do it.

Q. You heard Mr. Harris' testimony yesterday?

A. Yes.

Q. You heard the classification we made for the purposes of the question, between freight that went wholly through the State without stopping, interstate freight, starting outside and landing outside the State limits, and inter-state freight which started outside and landed in Missouri, or started in Missouri and landed outside, and the purely State freight: you remember that, do you?

A. Yes.

Q. What I want particularly to direct your attention to is, that upon some interstate trains there is what is called in railroad parlance local freight carried, and upon some through state trains there would be some interstate traffic carried. And for the purpose

of getting at the comparison, so in the end you would say the difference in cost between through and local about represents the
998 difference in cost between interstate and intrastate freight, what have you to say about the respective stuff carried upon these respective trains about balancing each other?

A. I think they about equalize each other.

Q. There is no fixed way that you would have to base your opinion, upon some kind of a premise, somewhere along the line, by which you can make any estimate of the cost of doing the service?

A. No sir, it varies with every shipment and with every day.

Q. So whether you use a ton mile or a train mile basis, after all, the elements going to make it up depend largely upon opinion?

A. Yes.

Q. And what did you say—without going into the detail of it—about the short haul in handling the traffic being so much more expensive than the long haul?

A. Well, that depends upon the volume of the tonnage, and of course the conditions that surround the traffic. It is a great deal more on short than on long. Your terminal expenses are greater in proportion, and where you have a short haul business I think you have not got the volume. You do not have the volume that you have in the long haul. For example, you start out with a car from a terminal point and distribute your short haul business, your way freight, and you cannot get the tonnage into it that you can into your long-haul train. Therefore you do not get the use of
999 the value of your equipment.

Q. Mr. Willard said about 60% of your freight business was that through interstate, I think about 30% the other, and about 10% of State, in volume: how would that be in your judgment.

A. Well, it would be pretty hard to estimate anything of that kind. I never had any occasion to make any figures on it. That varies with the Season and also with the crops. There are varying conditions that control that. I should think his figures were somewhere near right, although I never made any estimate of it. I know as a matter of fact, in a general way, that the volume of through traffic is greater than local.

The MASTER:

Q. Let me see if I understand that, Mr. Hagerman. That of the total business in the transportation of freight in Missouri, 60% is through inter-state, 30% is the second class of inter-state, and 10% State freight, purely local?

Mr. HAGERMAN: Yes. That is, in volume. I think upon the revenue basis it is probably higher than that. I have not the figures on that right here.

Q. Mr. Crosby, have you ever made any figures upon the idea of the extra cost of doing the State business over the inter-state business?

A. No sir, I have not made any figures on that.

Q. But you are perfectly familiar with all the conditions surrounding traffic in Missouri?

A. Yes sir.

1000 Q. And you heard Mr. Elliott's and Mr. Harris' statements in regard to that? What is your general judgment about it?

A. I think the figures they gave are about right. They are in the Operating part of it. I have not studied the question of cost so much because I am charged with procuring revenue to the Company and if the cost advances or increases, it would not change the rates.

Q. While you have not made a particular study about the details going to make up the cost, you have given the subject, in a general way, thought?

A. Yes, I know of course in a general way that the short haul is the most expensive business we have.

Q. And taking into consideration the offsetting as between particular cars carrying in the one instance inter-state and in the others purely state business, you think a fair comparison would be the difference between the local and the through business?

A. Yes sir.

Q. Because that State business is in the main made up of local freight?

A. Yes.

Q. Without going into any figures you think Mr. Harris' estimate and Mr. Elliott's estimate practically represent the situation?

A. I think so, yes.

1001 Q. In this general statement that you made about the rate not necessarily being higher as to state and inter-state, you gave some comparisons, those would hold good upon the other commodities?

A. Yes sir.

Q. Something was said here during the examination of witnesses, I think it was a question on cross-examination, as to the main business of the towns coming from the large cities like Chicago, and a long distance off; have you any figures on that subject?

A. Yes, I have made some figures but not on points in Missouri. The reason is that my records are not at hand for that. But on towns about the same size and similarly situated in Iowa, it shows that the received business does not move from small towns. That is, that the small stores do not draw their supplies from the large centers.

Q. Have you some figures?

A. At Red Oak, Iowa in the year ending June 30th, 1906, they received 9,000,000 lbs. of less than car load freight, and 12,600,000 lbs. moved from Chicago.

Q. What percent is that, about?

A. That is about 33⅓%.

At Creston, Iowa they received 23,000,000 and Chicago supplied two and one half millions, or about 10%.

Q. And the rest came from where?

A. From nearby distributing points, St. Joe, Council Bluffs, and Des Moines.

1002 At Vallisca, Iowa, which is a pretty fair sized place, they received five and one half million pounds, of which 600,000

or a little over 10% came from Chicago and the balance came from Missouri River towns and interior small jobbing towns.

Q. You happened to have those figures in shape so you could have something to back your general judgment?

A. Yes sir.

Q. That it was not true as suggested——

A. My idea is, that those small towns drew their supplies from near-by jobbing centers, and I got out a statement of this business in order to prove that idea, if it is disputed.

Cross-examination by Mr. KENNISH:

Q. In the instance you have just mentioned, giving examples to show that the way freight or less than car load lots do not come from large commercial centers, you named Creston, I believe as one point?

A. Yes sir.

Q. And what percent did you say was from Chicago to Creston?

A. A fraction over 10%.

Q. And the other places that you named as being the points from which the main bulk of the balance of the freight was shipped from was also cities outside the State of Iowa?

A. No sir, I do not say that.

Q. You named Kansas City, Omaha and St. Jo?

A. Yes sir, they get from those points and also from Iowa. Des Moines is also a shipping point in Iowa.

1003 Q. But the great bulk of that would be inter-state shipments, according to the point you have named as supplying freight to these Iowa towns?

A. To get down to the detail of it, I hardly think the bulk of it would be. There is a good deal of miscellaneous freight goes into Creston, Iowa.

Q. Which was the first point you named in Iowa?

A. Red Oak.

Q. What was the percentage from Chicago to Red Oak?

A. About 33½ per cent.

Q. Can you give a percentage moved from the other points you have mentioned, Kansas City, St. Jo and Omaha?

A. St. Joe had a little over 1%. Omaha had a fraction over 20%. Des Moines had about 4%. Burlington had a fraction over one, about 1½%. St. Louis, Missouri came in with over 4%. Peoria, for example, had 100,000 Lbs. in the gross for a year. There happened to be from Denver a shipment of 1700 lbs. But we keep these things——

Q. Kansas City you have not mentioned?

A. 108,000 lbs.

Q. What per cent is that?

A. A little over 1%.

Q. A large part of that freight was inter-state freight?

A. Omaha you might consider inter-state, but it is simply across the river from Council Bluffs. That was one of the big

1004 points, two million pounds.

Q. Of course it is inter-state if it is across the river.

A. They haul a good deal of that business across the river with teams and load it at Council Bluffs.

Q. That makes no difference if they haul it in teams across the river.

How many other points you mentioned, as distributing the traffic to that town you have mentioned, would be inter-state, except Des Moines, and I believe that was four per cent.

A. Des Moines, Burlington and Keokuk.

Q. Des Moines one per cent and Burlington four per cent?

A. Yes, and Keokuk two per cent. Council Bluffs had about six per cent.

Q. Did Council Bluffs have a larger per cent than Omaha?

A. No, sir.

Q. What was Omaha?

A. A little over twenty per cent.

Q. The inter-state part of it would be in the neighborhood of eighty per cent, eighty to ninety per cent, wouldn't it, according as you have given it there?

A. At that particular point it would be about eighty per cent.

Q. You did not select a point unfavorable to your
1005 contention?

A. No, sir, I did not.

Q. The reason you gave as showing that the reduction of the rates in Missouri would affect inter-state rates, would apply with equal force whether the attempted reduction in Missouri, was fair and reasonable or whether it was unreasonable, wouldn't it?

A. A change in those rates that would change the through rate would affect the through rate.

Q. That does not have any bearing upon the question as to whether the reduction made by the law is reasonable or unreasonable?

Mr. HAGERMAN: That is a question of law.

Mr. KENNISH: He is testifying as an expert.

Mr. HAGERMAN: I don't think that is a question of expertness. He can testify to any expert facts, but as to whether as a matter of law it would have any effect, I do not think he is competent to testify.

The MASTER: Counsel would not be restricted upon a question of law to the opinion of the witness.

(Last question is here read to the witness.)

A. I don't know that I grasp what you expect me to answer there. I have stated that any reduction made——

Q. What I want you to answer is this: as bearing upon the question as to whether the proposed rates under the Act of 1905, in Missouri, are reasonable or unreasonable, what you said as to its
1006 effect upon inter-state rates, would throw no light in this case.

A. It would change the inter-state rates.

Q. But the inter-state rate may be too high. It would involve that question, wouldn't it?

A. Naturally, it might, yes.

Q. Now, the main complaint you seem to lodge against this Act of 1905, Mr. Crosby, is in regard to the reduction on live stock, isn't it?

A. That is one of the items, yes.

Q. That is the main item you have spoken of?

A. That was one the largest reduction was made upon.

Q. Mr. Hagerman asked you to give your opinion about the increased cost of the short haul as compared with the long haul. I will ask you if your opinion would not be expressed upon that subject by your answer that the existing rates in Missouri were fair, just and reasonable, considering class, commodity and distance. That is, the rates in existence before the Act of 1905?

A. You are asking me there about the cost of doing short haul business as compared with long?

Q. Yes?

A. And then propounding the question how those rates compare with the rates previously in effect?

Q. I say, your opinion was necessarily given as to the increased cost of the short as compared with the long haul, when you answered his question, as to the rates in existence when the Act of 1905
1007 was passed, whether considering class, commodity and distance those rates were fair, reasonable and just?

A. I do not see what the rates themselves have to do with the cost.

Q. You take into consideration the cost in fixing the rates, don't you?

A. We do, we try to.

Q. If the rates existing before the Act of 1905 was passed, were reasonable, considering the element of class, commodity and distance, would not the rates in force as fixed by the Commissioners' schedule and your schedule, show what the increased rates should be, regarding distance, class, commodity, etc?

A. Our rates as we have them in effect are indicative of what we consider fair rates, considering the cost of doing the business.

Q. You necessarily considered the distance and the kind of freight shipped and the classification—in fact you answered Mr. Hagerman that they were fair considering those elements?

A. I think I did.

Mr. HAGERMAN: Considering everything.

Mr. KENNISH:

Q. And yet those rates were fixed, and the classification, mainly by the Statutes then in force in Missouri, weren't they?

A. I don't think so?

Q. You do not exceed the rates fixed by Statute, or by the
1008 Commissioners under the Statute, in any case, as to state freight, do you?

A. I do not recall just whether we do or not.

Q. You would be incurring a penalty if you did?

A. I do not recall whether those rates, whether the Commissioners' rates, were observed in all cases. I understand for example Hannibal

& St. Joe, there was a long period that the Commissioners' rates did not apply to Hannibal & St. Joe traffic.

Mr. HAGERMAN:

Q. That is by virtue of a special charter of that road?
A. The Legislature could not fix those rates.

Mr. KENNISH:

Q. That would be in regard to a class of traffic not fixed by the Act itself?
A. I understood not. I understood that the Commissioners' rates did not apply.
Q. You are aware that a large part of the freight, most of the freight that is included under the 1905 Act, has had maximum freight rates upon it since 1875 in the State of Missouri?
A. I cannot remember away back to 1875.
Q. You are familiar with the law, aren't you, in fixing rates?
A. I have been connected only latterly with the Missouri business, in the last two or three years.

Q. Don't you know, Mr. Crosby, as a fact in your business,
1009 as Traffic Manager of your System, that there has been maximum rates on nearly every commodity covered by the Act of 1905, in the State of Missouri since 1875?
A. I believe there has been such rates in effect, but whether observed by all the railroads, I don't know whether they have or not. That was during the time I had nothing to do with it.
Q. In fixing your rates you always aim to keep within the rates fixed by Statute upon the articles covered by the Statute, don't you?
A. I think we do, as a rule. I don't know of any exception to that. I have not compared those rates as we have them in effect today with the old Statute rates.

Mr. HAGERMAN: I think we can assume, as lawyers, that they did—for you would have been after them if they had not.
Mr. KENNISH: I will get through as quickly as possible, Mr. Hagerman, please do not interrupt me.

Q. The law in Missouri fixes the rate on certain commodities and empowers the Commissioner to put other commodities into classes fixed by the Statute and fix the rates upon all articles not specifically mentioned and included in the Statute; that is a fact, isn't it?
A. Yes, sir.
Q. And the Commissioners in Missouri, acting under that law, have fixed a schedule covering all the freight supposed to be handled in Missouri as state freight; that is true?

1010 A. I believe they have, at various times.
Q. Then the railroads are required to file a schedule of their rates with the Commissioners, aren't they?
A. Yes, sir.
Q. And you have prepared and filed a schedule, in compliance with that law?
A. I have no doubt we have, if the law requires us to do so, and I believe it does.

Q. Then your schedule is based upon rates fixed by Statute, and the Commission, except where your rates are lower than the rates fixed not by this bill but by the Commission? We do not get the distance carried in Missouri today.

Mr. HAGERMAN: What are you speaking of, the Commission? Does the Commission fix the maximum?

Mr. KENNISH: The law fixes it.

Mr. HAGERMAN: You are speaking of the fact that the Commission can fix it on certain commodities?

Mr. LAKE: Under the law of 1903 they can.

Mr. HAGERMAN: Do they do that by maximum?

Mr. KENNISH: Yes.

Mr. KENNISH:

Q. You say that the railroad schedule rates were in a large number of cases lower than those fixed by the law or by the Commission?

A. Yes.

Q. Did you fix those rates, such rates as have been fixed
1011 since you have been Traffic Manager?

A. You mean myself, individually, or under my direction?

Q. They were fixed under your direction?

A. Yes, sir.

Q. You were not of the opinion that your road was losing about one million dollars a year under the existing rates on traffic?

A. We could not help ourselves. Conditions fixed those rates, competition, or other reasons, and it was a question of staying in or going out of the business.

Q. Would carrying freight at a great deal less, aid you in staying in business?

A. The rates that we have established, as I say, were fixed by force of competition, and I don't know that they were any less than they should have been. That is, we get all we can get out of it.

Q. That was the basis on which you fixed rates, you charged the traffic all it can bear?

A. We did not consider we could get any more than we established.

Q. If you could get any more, you would have fixed it higher?

A. Possibly we would.

Q. How about points where there is no competition? Do you say you have no rates which are lower than the Statutory or Commissioners' rates, in those places?

1012 A. I think in a great many places we have less than the Commission's or the Statutory rates.

Q. You could not get anything more out of it?

A. Other reasons enter into that. The long and the short haul fixes a great many rates. We have long lines reaching certain points in Missouri. We cannot apply the Statute rate in Missouri, in all cases, because some one else comes in and makes a lower rate.

Q. You never fixed the rate at what the law imposes, except where forced by competition or the law itself?

A. We do the best we can on all those points.

Q. What is the reason you charge less, even at non-competitive points, than the law allows you?

A. That is one consideration.

Q. On the question of live stock you gave one instance of increased cost of doing that business, as the stoppage for feed and water: what is the law as to stoppage for feeding and watering, in what length of time?

A. The law stands at 28 hours.

Q. As to state business there would be hardly an instance in which you would have to stop for feeding and watering?

A. There might be some conditions under which we would have to.

Q. Not in 28 hours?

A. There might be conditions in which we would.

Q. What distance would your trains run in 28 hours, considering it a freight train moving at a high rate of speed that you say
1013 you must move with on live stock as compared with other freight: what distance would such live stock be carried?

A. If there was enough business to warrant it, there would not be a point in Missouri where we made scheduled time, where it would be unnecessary to unload. But this live stock business does not always come in large lots. It may come in one or two cars and would not be shipped immediately but have to hold it awhile.

Q. As to the long haul of live stock I wish to ask you further in regard to the comparison you made as between the rates of Maryville, Tarkio and Albany and such points to St. Louis: can you give one instance of a shipment of live stock from either of those points to St. Louis in the last year, a carload of live stock?

A. I cannot give you an individual instance, but St. Louis gets live stock from that section of the country. It is owing to market conditions. I cannot answer that question offhand.

Q. Albany is about forty miles or less from St. Joe, isn't it?

A. Yes.

Q. And how far from St. Louis—about 300 miles, isn't it?

A. It is about here somewhere (indicating time table).

Q. We know about what it is. It is about 300 miles. In going from Albany to St. Louis on your line, the stock would neces-
1014 sarily have to pass through St. Joe, wouldn't it?

A. Yes.

Q. In going from Tarkio to St. Louis over your line this live stock would pass through St. Joe?

A. It might and it might not.

Q. How else would it go?

A. You could send it around by Burlington.

Q. To go to St. Louis?

A. Yes, sir.

Q. That would be no shorter distance?

A. No, sir. We have given you the shortest distance.

Q. How far would Tarkio be from Kansas City—about a hundred and fifty miles, wouldn't it?

A. About 130, or somewhere along there. I think I have the exact distance here some place (indicating time table).

Q. You need not indicate the exact distance. We know about what it is.

A. (After examining time table.) It is 129½ miles.

Q. A shipment from Maryville over your Line would necessarily go through St. Joe?

A. Yes sir.

Q. How far is Maryville from the Kansas City stock market?

A. 128 miles.

Q. And how far from St. Louis?

A. 368 miles.

1015 Q. It is a well recognized fact that St. Joe and Kansas City have cattle and live stock markets and that they are much better than those of St. Louis?

A. I don't know that it is. They generally keep in line with St. Louis. Maybe for certain classes of stock, at certain seasons of the year.

Q. And that they do a much larger live stock business at either of those points than at St. Louis?

A. They do, because there is a great deal of live stock that goes into those markets, that does not originate in Missouri at all.

Q. And probably a great deal comes into St. Louis that does not originate in Missouri, but the point is that there are better live stock markets, no matter where the stock comes from?

A. So far as our road is concerned, we took as much live stock into St. Louis last year as we did into Kansas City. Somebody must have thought the markets were as good.

Q. I didn't ask you that.

A. That is an indication of how live stock moves.

Q. No, sir, because your line goes from a part of Missouri where you do your business, would necessarily encounter the St. Joseph market before it got to Kannas City. Wouldn't it? You would have to go beyond St. Joseph market to reach Kansas City?

A. Yes, sir, from certain sections we would.

Q. Then what class of live stock do you say would go
1016 from those points on which you made the comparison of rates, between those points and points in Iowa, would go to the St. Louis markets?

A. The comparison I was making there was in answer to the idea that your inter-state rates were a good deal lower than our state rates. I said they were not and gave those instances of live stock. I gave no instances on other lines.

Q. You were taking instances in making the comparison on live stock, where live stock would never be shipped?

A. I don't say so.

Q. Can you give an instance of live stock shipped from Maryville, Tarkio or Albany to St. Louis, during this year?

A. I do not carry those things in mind. I can probably ascertain if we had any such shipments or not.

Q. Don't you know as a general proposition that it would be exceptional if there was?

A. No, sir.

Q. The point that I tried to bring out is that live stock would not be shipped in the State of Missouri those long hauls, that you made the comparison with, under the Act of 1905?

A. We have hauled a good deal of live stock from central and western Iowa to St. Louis. That is a good deal more of a prosperous proposition than St. Louis.

Q. Iowa has no live stock market of its own?

A. It can get to Chicago and Missouri River markets.

Q. I was asking you about instances you have named
1017 and made a comparison of as to shipments to St. Louis?

A. It was necessary to make the comparison of the long distance, because I have not the inter-state business for the short distance. Inter-state rates for short distances, the rates from Iowa to St. Joe, which is the shortest inter-state live stock business we would have, are much higher per ton per mile, than the same rate on the same distance in Missouri. That is, the distance from the points in Iowa to St. Joe is a shorter distance. I mean to say the rates from Iowa to St. Joe are higher than into St. Joe from points in Missouri for the same distance.

Q. They are?

A. Yes.

Q. How about Kansas City?

A. The rates to Kansas City, the same is true——

Q. Your rate to Kansas City on live stock is $51.70 a car?

A. Where to?

Q. To Omaha. From Kansas City to Omaha?

A. I guess not. I will be very glad to haul that for half that any time, and we have a tariff giving it at half. You are figuring about the rate to Chicago. That is the rate to Chicago. But acknowledging that is the case, that shows the inter-state is a great deal higher than the state rate.

Q. Do you know the rate from Kansas City to Omaha?

A. I think it is ten cents per hundred or nine and a
1018 half cents. I don't know off-hand.

Q. What would be the weight of a car of cattle?

A. The maximum is 22,000 pounds for a 36 foot car.

Q. How much from Kansas City to Omaha?

A. $22.00. But that is only the proportionate part of the local rate.

Q. How much is your rate, under the State rate, for a distance of fifty miles?

A. In Missouri?

Q. Yes.

A. You mean the present state rate?

Q. Yes. You know what the rate is?

A. I had that here a moment ago. The rate from——

Q. Wouldn't it be $18.50 per carload?

A. For fifty miles?

Q. Yes; ten dollars for the first 25 miles——

A. Well, the rate under the Missouri Distance Tariff today is actually 8½ cents for 50 miles and 36 ft. car,—that would be $18.70.

Mr. HAGERMAN:

Q. Is that under the maximum law of 1905?
A. This tariff is dated November 5, 1905.

Mr. KENNISH:

Q. I said under the existing rate.

Mr. HAGERMAN: Without regarding the law we are attacking?
Mr. KENNISH: Yes.

Q. Then you would receive about as much under your scheduled rate for 50 miles in Missouri, as for 200 miles on the inter-
1019 state shipments?

A. I said that rate from Kansas City that I spoke of was the proportionate rate, that is, the division of the through rate, to enable the Kansas State people to dispose of some of their canners' stock into the Omaha market. The idea is that their cattle shipped into the Kansas City market, do not reach the South Omaha market, what is wanted for what is known as canners, and we make a proportionate rate.

Q. Regardless of the reasons, the fact is that on that inter-state shipment the rate for the same distance would be between one-third and one-fourth of what it was on State shipments the same distance?

A. You are talking about a distance of 200 miles.

Q. Yes, and fifty miles under the State rate.

A. Yes, under your distance tariff of 200 miles in the State your rate would not be double that rate.

Q. I am speaking of a distance of fifty miles. You are talking about long and short hauls?

A. Yes. And your statement is that the rate from Kansas City to Omaha is what?

Q. I believe you said it would amount to about $22.00 a car?

A. Yes.

Q. And for fifty miles in Missouri, under the schedule rate you have in force, it would be about $18.00 a car?

A. As I said, that is a division of the through rate.

1020 Q. What would be the percentage that you would allow to Missouri on inter-state shipments as compared with the scheduled rate you have on live stock for Missouri points?

A. You mean in dividing the rate?

Q. Yes.

A. The rate would be divided on a mileage basis, I apprehend.

Q. If it was a shipment that went entirely across the State of Missouri, the rate per ton per mile would be very low, wouldn't it?

A. What do you mean—that shipment would not go entirely across the State of Missouri?

Q. But I was speaking of a case under the division we have been making of inter-state freight that passes entirely across the State. In that case the rate per ton per mile would be much lower than on inter-state shipments that originate in Missouri and go to a point outside, or originate outside and come to a point in Missouri?

A. I don't think so. It would be according to the length of

the haul at the other end. If the shipment went across 300 miles of Missouri and 50 miles into Iowa and divided on a mileage basis, Missouri would get the great big end of it.

Q. If it originated in New York and went to Denver?

A. It would pay Missouri its full local rate in such case. The rate from Ohio to Colorado and Utah etc.

Q. Then it would not be paying Missouri on a mileage
1021 basis?

A. I say the rates are based upon a combination of the rates across the State of Missouri. If you want to get a rate today from Cincinnati to Denver, say on first class goods, I think the rate from Cincinnati to East St. Louis is 40 cents; the rate from East St. Louis to St. Joe or Kansas City is sixty cents; the rate from Kansas City or St. Joe to Denver is $1.25. That makes the rate two and a quarter. And that is the way the rate from Cincinnati to Denver is arrived at.

Q. If a shipment is made from Cincinnati to Kansas City you say the rate from Cincinnati to Missouri River is 40 cents?

A. Yes, sir.

Q. And from there to Kansas City is sixty cents?

A. Yes, sir.

Q. In apportioning the earnings on that shipment, would you apportion sixty cents to Missouri and the forty cents would be distributed over all the balance of the distance?

A. Yes, sir, that is the way the rates are made.

Q. Then you are not apportioning earnings according to the mileage in Missouri, as was stated by Mr. Sturgis?

A. You asked Mr. Sturgis one question and you ask me another. You asked him how he divided the rates between Missouri and Iowa, on our own road. You ask me how we divided the rates between Cincinnati and Kansas City and I say that the rate
1022 is divided the way it is made, on the basis of the local rate, Missouri, sixty cents.

Q. So the rule as given by Mr. Sturgis, that the earnings were apportioned according to the mileage in each State through which the road ran, applied only to shipments on your own Line?

A. That is all he was talking about. He could not have been talking about anything else.

Q. And where shipments are made over different roads you have a different rule for apportioning the earnings?

Mr. HAGERMAN: As between the different roads?

Mr. KENNISH: We are talking about a shipment from Cincinnati, Ohio, to Kansas City.

A. Or to Denver.

Q. And what proportion of the entire earnings should be apportioned to Missouri?

Mr. HAGERMAN: As between those railroads?

Mr. KENNISH: For the entire distance we are talking about.

A. If the Big Four gives us a shipment originating in Cincinnati and going to Kansas City, which is first class, we get sixty cents

a hundred, and that is our local freight rate from St. Louis to Kansas City.

Mr. KENNISH:

Q. You made the comparison between the rates charged for live stock and grain?

A. Yes.

1023 Q. And stated you could get $30.00 for a carload of grain shipped 25 miles and $6. for a carload of stock—I believe those were the figures you gave?

A. That is according to the schedule.

Q. But you were figuring grain in carloads of sixty thousand pounds?

A. That is the capacity of the live stock car.

Q. And live stock at what weight?

A. The car weight is provided for in the Bill.

Q. That would be about 20,000 pounds or so?

A. You could load them heavier than that.

Q. That would not be a fair comparison would it?

A. We use the same medium for carrying it.

Q. But haven't you and the experts you have listened to here, given as a reason for the increased cost of local over through freight, that the number of cars used was an element?

A. We could haul more of those 60,000 cars of grain than we could of live stock.

Q. And the weight of each car, wouldn't it take more motive power?

A. No, sir, we don't have to run the grain into the market in time to be sold the day of arrival.

Q. You could not haul as many cars in a train of sixty thousand pounds as of twenty thousand pounds?

A. But we get much more money for them.

Q. I know, we have that item. You say you get $30. But could you haul as many cars of grain in a train as of live stock?

1024 A. I think we could when you consider the difference in the speed. The engine that would haul the live stock would probably take only fifty or sixty per cent of its hauling capacity, whereas in handling the grain it would take its full capacity.

Q. You think an engine would carry as many cars of sixty thousand pounds as it would cars of twenty thousand pounds?

A. It is a question of gross tonnage in the train. But you can approximately make more train earnings per mile than on a car of live stock.

Q. The comparison you made was earnings per car?

A. If you had 20 live stock cars in a train at $6.00 each that would be $120.

Four cars of grain at $30. each would be a hundred and twenty dollars. So all in excess of those four cars would be just a premium on what we would get for hauling the live stock.

Q. And if that was the carrying capacity of the engine——

A. If the carrying capacity of the engine was twenty cars of live

stock for $120, and it would carry only ten cars of grain at $30, you would have $300 as against $120.

Q. But you would have a much higher tonnage in the grain shipment than you would have in the live stock shipment?

A. That is true. But you get more money and you would not take the risk.

Q. That is another matter?

1025 A. That is an element of expense.

Q. I am supposing that the twenty cars of live stock would be the amount of tonnage that your engine could carry?

A. Yes.

Q. Then in comparing the shipment of grain, take an equal amount of tonnage with the twenty cars of live stock to make a comparison on that basis?

A. How is that?

Q. Take the same amount of tonnage in each train?

A. Well you would have two hundred tons of live stock, for example, for $120, under your tariff. That is, assuming each car weighed 20,000 pounds. Now if I had twenty thousand pounds of live stock it would be for ten cars, two hundred tons. You get $60. For two hundred tons of grain we would have $200.

Q. How do you figure you would have $200.00?

A. Because your rate on the grain is $1. a ton and the rate on live stock is 60 cents. That is just the difference.

Q. That would make a much less difference than the way you were figuring it in your testimony in chief, wouldn't it?

A. I was figuring on the engine being able to carry a good deal more grain than they do of live stock, because we do not have to make the speed on grain that we do on live stock. I was telling what we could do with the same engine. But with the identical tonnage it makes a difference.

1026 Q. You stated that the rates on live stock in Iowa might be reasonable there, but confiscatory in Missouri: will you explain why that would be true?

A. Iowa rates are not used on live stock in Iowa. They do not have any business in Iowa to compare with the haul. There is only fifteen per cent of the live stock marketed in Iowa on which those rates apply.

Q. Shipments of live stock in that state are nearly all inter-state?

A. Yes, and the Iowa local rates do not apply at all.

Q. Under that state of facts the question of density of traffic would come in in favor of Missouri on live stock, as compared with Iowa?

A. There is more live stock shipped and handled in Iowa than in Missouri.

Q. But in speaking and making a comparison between Iowa and Missouri you were taking into consideration the entire State of Missouri, while your lines have to do with that part of Missouri where the density of live stock would be at least up to that of Iowa?

A. I doubt it.

Q. Your lines are in the northern part of Missouri?

A. Yes, sir.

Q. And it is a great live stock country?
A. So is the southern part of Iowa.
Q. The southern part of Iowa and the northern part of
1027 Missouri, so far as live stock is concerned are much of the same character of country?
A. I think there is more mileage in Iowa in the stock raising section, than we have in the stock raising section of Missouri.
Q. The comparison you made between points in Iowa, from points in Iowa to Chicago, with the rates in Missouri would be compared to the rates you had in force in your inter-state traffic with the rates in force in Missouri on the State traffic?
A. I gave you rates from Chicago to St. Louis as well as from Iowa.
Q. Will you give the rates from some point, say on your Line in Missouri to Chicago, and the distance, on live stock, so we can compare them with the rates you complain of in Missouri?
A. Our rates from——
Q. Take it say from Maryville, Tarkio or Albany, these points you compared as to rates, as to rates to St. Louis?
A. Take Maryville, Missouri, to St. Louis is 368 miles. Our rate is as I have previously given, $39.60.
Q. Per car?
A. Yes, for a 36 foot car. Now for the same distance our rate from Brookfield to Chicago is $46.20. Our rate is $6.60 per car higher for the inter-state shipment from a point in Missouri to Chicago.
1028 Q. What is your rate now say from St. Joe to St. Louis on live stock; that is a point about equally distant?
A. It is 316 miles from St. Joe to St. Louis. Our rate on cattle is 14¾ cents per hundred.
Q. How much a car?
A. The question of weight—the question of weight comes in on all our estimates given here.
Q. Take the same car you explained about in the inter-state shipments?
A. $32.45.
Q. And in the shipment to Chicago what was the amount?
A. Brookfield to Chicago is 367 miles.
Q. I asked you first for the rate from Maryville to Chicago.
A. I haven't that here. It is $51.70 or 23½ cents per hundred.
Q. Where is that?
A. From Maryville or from Tarkio.
It is 23½ cents and that would be $51.70 for a 36 foot car.
Q. From what point?
A. Tarkio to Chicago.
Q. You gave the rate from Brookfield. Take that instance: what did you say was the rate per car?
A. From Brookfied to Chicago $46.20.
1029 Q. And what part of that would be assigned to Missouri?
A. Brookfield to Chicago?
Q. Yes, on that shipment?

A. Under the mileage prorate proposition it would be practically 30 per cent.

Q. Do you know the number of miles?

A. I say 104 miles from Brookfield to Quincy and 203 miles from Quincy to Chicago.

Q. Take a shipment from Brookfield to Hannibal, which is just across the river, isn't it?

A. Yes, sir.

Q. Under the schedule you have in force in Missouri on a carload shipment, what is that rate?

A. I haven't that rate here. That would be 104 miles. There is no live stock shipped from points in Missouri to Hannibal.

Q. You have a rate for that distance, haven't you?

A. Yes.

Q. Figured on that distance?

A. Under the distance tariff, the rate would be $25.30 for a 36 foot car.

Q. The same size car you have been figuring on to Chicago?

A. Yes, sir.

Q. What would be the relative amount received under the
1030 inter-state shipment and under the state shipment from Brookfield to Hannibal?

A. The inter- — shipment under the mileage basis would figure something like $15.00, and under the local distance Act——

Q. From Missouri?

A. Yes.

Q. And under the state shipment Missouri would get what?

A. $25.50, at the loacl rate.

Q. Nearly double?

A. There may be instances, and there are, where Missouri would have the big end of it and get more than the local rate. So those things offset each other. You can figure out instances where Missouri gets away the worst of it and then you can turn around and see where it gets the best of it. Those things are supposed to equalize themselves. If one man is going to get the little end of things all the time he would not stay on in business.

Q. I wanted to know how your inter-state rate would compare with the state rate?

A. The inter-state rate is higher per mile than it is for similar distances between points in Missouri.

Mr. KENNISH: I want to ask Mr. Crosby to bring here the schedule of rates in force on the Burlington before 1875, if he has them.

1031 A. The C. B. & Q. did not take possession of those lines until long after that time.

Q. I say any part of the Burlington System now?

A. I haven't those old records.

Q. You haven't them.

A. No, sir.

Recess was here taken until 1:45 P. M.

After recess the following proceedings were had.

Mr. KENNISH:

Q. Mr. Crosby, you were giving the items of the increase in the transportation of live stock as compared with certain other things, for instance, grain, stone etc., and one item you gave was the higher value of live stock per car: what was about the difference you gave in value on the two classes?

A. I think the principal item that was mentioned there was the lumber, at the time the question was asked. A car of live stock, of course, varies in value. A car of lumber at $20.00 a thousand with 15,000 feet in the car amounts to $300.00. One thousand bushels of wheat at 70 cents amounts to $700. I guess the class of cattle we handle in Missouri are worth 65 to $70. a head, steers.

Q. You were figuring on fat cattle?

A. That is the principal class of live stock.

Q. You do a large business of stockers and feeders?

A. In Missouri last year out of 20,000 cattle handled, we handled 4,000 cars of feeders, going out of St. Louis and St. Joe.

1032 Q. That would be about one-seventh?

A. Yes.

Q. You stated that a carload of live stock would be about 20,000 pounds I believe?

A. Well that varies. I have heard live stock shippers, under oath, swear that they loaded 28,000 pounds and as high as 30,000 pounds.

Q. When you are estimating the cost of transportation of live stock and you take it at 20,000, we should take it at the same figure when figuring as to the value of the live stock, shouldn't we?

A. I was really a little bit too liberal when I took 20,000 pounds for a car load of stock. I made the rate really higher than that.

Q. Assuming 20,000 pounds was the weight we took for figuring the cost?

A. 20,000 pounds of lumber to a car, you want the figure?

Q. Take live stock. What is the value of a car of live stock?

A. That varies as to the class of cattle. But I should think $65. a head for fat cattle would be a fair value. I suppose they may weigh 13 or 1400 pounds to the head.

Q. That is exceptional, isn't it?

A. Well, call it 1200 pounds. 1200 into 20,000 is about $17.00 a head to the car.

Q. What would you value a steer at, about five cents a hundred?

1033 A. I think about that.

Q. $60. to the head?

A. Yes. One thousand a car. It is really worth more than that and they would get more than that. Now take 20,000 pounds of lumber——

Q. We were speaking about grain also. Let us not overlook that. You said a carload of grain would be about $700.

A. A carload of wheat or corn would be worth less money—no, I would not acknowledge that a carload of wheat is 20,000——

Mr. HAGERMAN:

Q. He wants an estimate upon 20,000 pounds.
A. That would be 233 bushels to the car.

Mr. KENNISH:

Q. You are figuring that at 70 cents on wheat?
A. Call it 75 and be liberal about it.
Q. That is not overly liberal, is it?
A. Where do you want your wheat? If you want it in Kansas City it is a different proposition than in Chicago. We are figuring live stock on the basis of Missouri River markets.
Q. There would not be any great difference would there?
A. At that rate there is a difference of five times the value on live stock than grain.

Q. Take other live stock such as horses, doesn't your Com-
1034 pany fix a price beyond which the stock will not be valued, for the purpose of any damage to the stock?

A. But they never made it stick.
Q. Do you have that in your contract?
A. That is like a lot of other things, but it don't work.

The MASTER:

Q. What is that?

Mr. KENNISH:

Q. Haven't you fixed a value in your contract for the shipping of stock beyond which the Company will not go as to the value of stock per head?

Mr. HAGERMAN: And his answer was that the Courts do not sustain that provision.

A. Take our valuation on horses $100. a head. 20 horses would be in a 36 foot car. They are not handled by weight but by car. There is $2,000.
Q. But there is not very much shipment of horses by carload, or any other way, as compared with hogs and cattle?
A. Oh no.
Q. It is a very small item of your freight?
A. There have been seasons when the shipment of horses cuts quite a figure in the percentage of live stock we handle. But as a general proposition the shipment of horses is not as heavy as of cattle and hogs.
Q. You said that the rate established by the Act of 1905 for the shipment of stone—that is not included in the Act No. 1194 that we have been speaking of, is it?

1035 A. I don't know.
Q. It is not in the maximum freight rate?

Mr. HAGERMAN: That is a separate Act at the same session.

Mr. KENNISH: A separate Act as to stone and one or two other things?

A. It is omitted in the tariff rate of the Commission. Here is the tariff issued (witness here produced tariff), by the Railroad Commissioners, and that includes stone.

Mr. HAGERMAN: You understand, your Honor, that the rate on stone in 1905, and probably one or two other commodities, was fixed by a separate Act?

The MASTER: Yes.

Mr. HAGERMAN: Some of these Bills refer to those things specifically. I call your attention to it so you will understand.

Mr. KENNISH:

Q. The Act of 1905 repealing Section 1194 and enacting a new maximum freight rate law instead of Section 1194, does not cover near as much freight as the old law covers, does it?

A. I cannot answer that question. Of course, the tariffs speak for themselves. They show. I have never checked them up particularly.

Q. Take for instance Class E (Counsel here reads), that is a classification under the old law? Now that would be less than carload lot?

1036 A. Yes, sir.

Q. Under the new law no rates are provided for on any freight less than carload lots?

A. That is correct.

Q. And under the old law, Class J, which covers coal, brick, sand, stone, railroad ties, cord wood and all heavy fourth class articles in carloads, "and in addition to the several articles in said special class shall be added other articles"—that class under the old law covered the great bulk of the heavy freight, didn't it?

A. As I recollect it that covered articles you named and sand and that class of things.

Q. And coal?

A. I don't recall whether coal or not.

Q. And all of the freight under Class J is omitted from the new law entirely, isn't it

A. We have some in here, stond, brick, and sand.

Q. But those are under a separate Act which we have been speaking about?

A. Yes, sir.

Q. Class J is not in the new law at all?

A. No, sir.

Q. And even under the separate Acts which you refer to, stone, etc., that Act covers only undressed stone, crushed rock, sand and paving brick?

A. Building or paving.

Q. That is only a small part of the freight that was included in Class J under the old law?

1037 A. I don't think we ever classed J on coal.

Q. Coal was included under Class J?

A. I know, but you couldn't get it.

Q. You couldn't get it?

A. No, sir, couldn't get it, not from the mines on our railroad.

Q. You mean you adopt the lower rate on coal than that permitted by the Statute?

A. We could not get at the big consuming points of coal the rates named in Class J.

Q. I don't understand you?

A. I say that the rates on coal to the large consuming centers, terminal points, like St. Joe and Kansas City, Class J rate if in force would not enable us to meet competition of the mines nearer by.

Q. And so you just charged less upon that than the Statute would authorize you to charge?

A. On some of it. Of course, outside the terminal points the consumption of coal in our territory is limited, is a small item.

Q. The point I call your attention to is that Class J is released from the maximum rate of 1905?

A. Yes, sir.

Q. And also a large part of the freight that was covered by Class E and Class F. Class F is——

A. Less than car load.

Q. Such freight as was included in Classes E, and F, in less than carload lots are entirely released from the operation of the

1038 new law?

A. Yes.

Q. Did you take that fact into consideration in considering the effect of the new law on the revenue of the Company?

A. I cannot say that I did, for the reason that the commodities named therein, as I have previously stated, it would be impossible to get any higher rate than those rates. Those rates were in force for years on all the roads in Missouri. The class of commodities named therein are competitive in every sense. When you move brick for instance, you generally move it in competition with the local manufactory? When you move sand from one place to another it is in competition with the local sand bank, but by making a low rate you are able to move the cars which otherwise you would have to move empty.

One of the articles in Class J used to be wood. There is very little wood moved in Missouri from points on our road. There is practically nothing doing in it.

Q. And in the matter of lime?

A. You have a carload rate on lime now.

Q. But you are not required to have a carload rate on lime under the new law?

A. Yes, you are, for the railroads voluntarily make a less than carload rate on lime. They have in all western territory. For the reason that small towns cannot handle as much as a carload of as

perishable a commodity as lime. The general rule has been
1039 to make a rate less than carload lots of lime 125 or 140 per cent higher than the carload rate.

Q. But there is nothing in the matter of competition that would cause you to reduce the rate on lime?

A. I take it we would not reduce them unless we thought there was. We might be fooled about it.

Q. You would not?

A. No, sir.

Q. Stating the rule as you did before, that you charged as high a rate as the traffic will bear?

A. We endeavor to adjust our rate so as to move the traffic and not retard the movement of it. There are varying conditions. We can afford to do business some days for less than other days. We may be confronted with a condition of the movement of a large number of empty cars and the question is can we move a commodity at a lower rate rather than move those cars empty. We can afford to move those cars much cheaper under those conditions. Another thing, as a general proposition the tide of business is generally one way. If you have a load one way you have an empty the other way. It all goes in one direction as a rule. Practically, in a sense, you have double the distance hauled to move many of the commodities and a great deal of the business you handle.

Q. In the matter of live stock we have been discussing so much, wouldn't you say that about one-seventh of the total shipments of live stocck was feeders and stockers?

1040 A. Yes.

Q. That would go in the opposite direction to fat live stock?

A. Yes, sir.

Q. A car that would have fat live stock to take to market would have the feeders and stockers on the return?

A. But they may not go to the same place. You may have stock moving from Tarkio to St. Joe and not have anything going out of St. Joe back to Tarkio, or to a point in that vicinity, and with the movement of live stock that car would have to go back empty.

Q. Isn't it a fact you have freight trains carrying fat stock from those lines in north Missouri, running over it regularly?

A. I don't think they ship every day. There is a prejudice on the part of live stock shippers as to days for marketing. That is being done away with more or less, but they generally select two preferential days for putting their stock on the market.

Q. But your trains run every day?

A. Yes.

Q. So if a shipment of stockers or feeders were sent up on any of your branch lines to Kansas City, the cars would probably be utilized in taking live stock back to the market?

A. Yes.

Mr. KENNISH: That is all.

WITNESS: We were talking about whether these inferior towns

handled their merchandise and I had an example of
1041 it on there. I have since obtained a few examples for Missouri. For example, Maryville, Missouri. We hauled into Maryville in less than carload lots of merchandise 4,300,000 pounds in the year 1905. Of these 2,348,000 came from points in Missuri, that is from St. Joe, Kansas City and St. Louis. Chicago contributed 860,000 pounds. That was the only movement of any moment from any point outside of Missouri. The balance of the stuff was scattered, and does not amount to anything.

Q. That was less than carload lots?

A. Yes.

Q. What was the Chicago?

A. 860,000 pounds, about 20 per cent, just 20 per cent of the total.

Now, take Tarkio, Missouri, which is a pretty fair town. We had into Tarkio in 1905, 4,600,000 pounds of less than carload shipments, of which 2,245,000 pounds came from points in Missouri, that is St. Joe, Kansas City and St. Louis. Chicago contributed 600,000 pounds, or about 13 per cent.

Now for some unaccountable reason Tarkio in 1906 did not do as well as in 1905 on merchandise. It had only 3,700,000 pounds of which 2,000,000 came from points in Missouri. 530,000 pounds came from Chicago. About the same proportion of Chicago business that they did in 1905.

Q. How much from Omaha and Council Bluffs?

A. Omaha and Council Bluffs in 1905 contributed
1042 205,000; in 1906 contributed 434,000 pounds.

Mr. HAGERMAN:

Q. Was there anything else?

A. There was an inquiry made this morning as to whether we could produce the tariffs of away back in 1875 or 1876. We have no Missouri tariffs on that section of the country and I don't know if we have any from Iowa that would make the rate from that section of the country.

But I would say that I was General Freight Agent of the Kansas City, St. Joe and Council Bluffs in 1881, and my recollection is that our rates on live stock out of that country to Chicago was 70 or $75. a car. And in those days the cars used were 28½ and 30 feet in length. 30 foot cars were just beginning to come into use. Here it is. (Indicating tariff.) This is a C. B. & Q. tariff dated 1885. My recollection is correct. The rate on cattle from Clermont, Missouri, on the border of southwestern Iowa to Chicago was $70. a car. The rate on wheat out of that country was 30 cents a hundred and 25 cents a hundred on coarse grain. I was able to confirm that by turning up the old folder for 1885. But my recollection is that those were the figures for 1881 and had been for several years prior.

Mr. KENNISH:

Q. What we wanted in particular was the schedule of rates applying to state rates.

A. We have not any Missouri records. These rates are an inter-state proposition on freight from the C. B. & Q., but from my acquaintance with that country and the rate proposition, my recollection is the rates were always the same and always have been carried that way.

1043 Q. But it was rates applicable to shipments entirely within the State of Missouri that I desired.

A. We haven't those.

Q. How long have you been in the employ of the Railroad Company?

A. I have been at work for the C. B. & Q. since 1876 with the exception of a couple of years on the Hannibal & St. Joe.

Q. I will ask you if — your knowledge of freight rates, if the freight rates in force on the Burlington System, or any part of that system, were proportionately about the same as to distance as they are at the present time?

A. I don't think so but I could not remember well enough to answer that question either yes or no. You can take this inter-state rate here as a fair illustration of the rate conditions.

Q. Because you are under no restriction of law as to the relative rates imposed on inter-state business now?

A. No, sir. And the fact of the matter is that under the distance tariff they cut no figure whatever upon the great big percentage of the business you handle, unless they are extremely low. But none of our terminal rates are based upon distant- tariffs. The only part of the country where that exists is in Iowa where the rates are both minimum and maximum. It is inflexible as to distance but there is a rate. If you want to ship via the long, you have to pay a higher rate than if you take the shorter haul.

1044 Q. If there are two lines, the short line does the business?

A. Yes.

Q. The long line does not usually do the business under such circumstances, at a loss?

A. They simply say that they cannot afford to do that business.

Q. And so they do not do that business?

A. They won't do it.

Q. And it is not your opinion that the rates ought to be at such a figure that the road with the longer mileage between two given points ought to be able to make a profit on the rates?

A. As I say, in the Iowa instance, they are the lowest rates we have anywhere and the longer lines do not consider it profitable to meet the short line rates.

Q. In Missouri does not that same thing apply?

A. I think where there is an extreme difference they do not undertake to meet the rates.

Q. If the road with the longer mileage between two given points could carry the freight and make a reasonable profit, then the road with the shorter distance would make more than a reasonable profit, wouldn't it?

A. Those conditions exist only where there is a very large amount of traffic.

1045 DARIUS MILLER, a witness of lawful age, being duly produced, sworn and examined, testified as follows:

Direct examination by Mr. HAGERMAN:

Q. Please state your name?
A. Darius Miller.
Q. What is your position?
A. 1st Vice-President of the C. B. & Q. Railway Company.
Q. What has been your railroad experience?
A. Prior to coming to the Burlington I was connected with the Great Northern as Vice-President and prior to that with the Missouri, Kansas & Texas as Vice-President.
Q. How long were you with the Great Northern, and with the M. K. & T.?
A. 3½ years with the Great Northern and six with the Katy.
Q. How long have you occupied your relations with the Burlington?
A. Since January 1, 1902.
Q. Now what other railroad experience have you had?
A. I was Traffic Manager of the Queen & Crescent Road from Cincinnati to Louisville and New Orleans.
Q. For about how many years?
A. Four years. And prior to that time I was with the St. Louis Southwestern, known as the Cotton Belt Road, as Traffic Manager, for five or six years.

1046 Q. Your connection with the Great Northern, the Katy and the Burlington, has been specially in reference to the traffic of these roads?
A. Entirely with reference to the traffic and commercial relations of these Companies.
Q. I wish you would give in a general way, just briefly, some of the considerations that govern you in the determination of what rates should be charged, and some of the difficulties of the situation?
A. That is a hard question to answer. I don't know that the railroads, as a rule, make its rates. They are substantially made for them.
Q. What do you mean by that? By law?
A. They are made first by the water competition, commercial conditions and by the law, and by competition among the carried themselves.
Q. As between the long and short lines, between given points, how does that affect the situation as to rates?
A. The long line is obliged necessarily to make the same rates as the short line, if it intends to participate in the business.
Q. You heard Mr. Crosby state here that in view of the central position of the State of Missouri, its location and all, the lowering of a rate having a certain effect upon the inter-state rate, and disturbing and disrupting the entire situation?

A. Yes. Substantially all our through business, west
1047 bound—by through business I mean business originating east of the Mississippi River and passing to the Missouri River

and beyond. They are based on Mississippi River and eastbound they are based on Missouri River. And any change in rates that reduces the rates between the Missouri and the Mississippi River or between Hannibal and St. Joe say, reduces practically all our through rates.

Q. Take for instance here like the live stock rates where the change is quite radical as applied to an immense volume of your business, and what would be the result on the general traffic situation if that reduction should be sustained?

A. My recollection is that rate reduced our rate from the Missouri River to—I don't remember just how that does affect our through business on live stock.

Q. I did not know but that you were familiar with the figures?

A. No, sir, I have forgotten them.

Q. The reduction is very great. The rate they fix, as I understood from the figures given by Mr. Crosby, and as I recall them, the live stock rate for instance into Iowa and Illinois was 2½ or 3 times as great as authorized in Missouri by this new Act.

A. Those proposed live stock rates in Missouri are lower than they are in the surrounding states. This rate I believe reduced our rate from Missouri River to St. Louis and Chicago, being a differential point, would, of course, pull down that rate accordingly, if
1048 we maintained the Chicago differential basis.

I will explain that this rate reduced the rate from St. Joe to Hannibal, the present rate, and it is the practice to make St. Louis the same as Hannibal. And preserving the differential would reduce the rate to Chicago. That would reduce all our rates on live stock for the entire System west of the Missouri River.

Q. And that would be very serious disruption?

A. Yes, sir.

Q. Produced here as Exhibit 8 to Mr. Crosby's testimony is a statement of the commodities where a charge is made at less than what could be charged under this maximum rate law. And you heard Mr. Crosby's statements and illustrations as to cement and stone, which he said was applicable to each and every commodity, as to its being impracticable, from a commercial standpoint, taking all the conditions into consideration, to raise that rate up to the maximum fixed by law: are you familiar with that situation?

A. Yes.

Q. And what would you say about that?

A. His statement about that I believe to be correct?

A. Is there any way, Mr. Miller, by which one can determine accurately the extra cost if any of doing state business over interstate?

A. It is impracticable to determine that with any degree of mathematical accuracy, just what that difference is.

Q. That is what I am getting at.

1049 A. It is so complicated. Some local business handled on through trains, and some little through business handled on local trains.

Q. So after all whatever basis you take to figure it out, it would

have to be an estimate, depending somewhere along the line upon the opinions of people?

A. Yes.

Q. And therefore it is a question that is to be determined very largely from the judgment of men of experience and having full knowledge of the local situation?

A. It can be determined only by being familiar with the exact facts, and then approximately, arbitrarily, dividing expenses.

Q. Something has been said here, and you have just mentioned that, that on inter-state trains sometimes state traffic is carried and vice versa, and sometimes on a local branch through traffic is carried?

A. Yes, sir.

Q. And sometimes on through trains local traffic is carried?

A. Yes, sir.

Q. That is the situation with which you are confronted?

A. Yes, sir.

Q. What do you say as to the statement made by some of these gentlemen, that those things about balance themselves in the long run?

A. I think they average up.

1050 Q. As I understand, the freight here has been classified by some of the witnesses into three classes: one the inter-state class that runs through the state without stopping; another inter-state class that starts out of the State and stops within, or starts within the State and stops without; and still a third class which is strictly State traffic, beginning and ending in the State of Missouri; you were here when the witnesses had that pointed out?

A. Yes.

Q. I would like your judgment, taking everything into consideration, giving in your judgment due allowance for the increase of revenue from any short state shipment, just upon the lines that were inquired of, for instance, from Mr. Elliott, how much more in your judgment would it cost to do that strictly State business than it would cost to do the inter-state business?

A. I think that their estimate of three times is very conservative.

Q. You think that three times is all right, after giving the benefit of any increased revenue that comes from it?

A. I think it is very conservative.

Q. Does this excess of revenue that comes from local business or short hauls, is it the greater the shorter the haul?

A. The higher the rate per ton per mile, yes, necessarily.

Q. The shorter the haul means the more the revenue?

1051 A. Yes, sir.

Q. And the shorter the haul necessarily increases the multiple of the cost of doing the business?

A. Very materially.

Q. So whenever you get to figuring upon that basis, this three times may run up to a very much higher figure?

A. In Missouri I think it is safe to say that our revenue on our

local business will average more than on our through business which is due to the short haul.

Q. Wherein is that extra expense? What are some of the elements you take into consideration in thinking that is more expensive?

A. To my mind the volume of business is the chief factor of cost. The item of train expense for local trains is greater than the volume of business is materially less.

Q. On account of the waste spaces in cars and so on?

A. Of course the divisor being less the quotient has to be higher.

Cross-examination by Mr. KENNISH:

Q. The increased cost of doing the State business as compared with the through or inter-state business would depend largely upon the percentage of what we call local or way freight included in the State business, and the same kind of freight included in the inter-state business, wouldn't it?

A. That would depend upon the volume of each and their relation to each other. If the volume was the same and the average haul the same and the cost per ton mile the same, the cost
1052 would be exactly the same.

Q. Whether we consider state or inter-state freight, the item that goes into the increased cost of the handling of the freight is mainly that of way freight, that has to be delivered at way stations in less than car load lots, isn't it?

A. Yes, sir.

Q. There is not so much difference between carload freight whether it is state or inter-state freight?

A. That will depend, of course, it is affected very materially by the average length of the haul.

Q. But that is compensated for very largely by the increased rates, isn't it?

A. That is a factor in it, of course.

Q. But the way freight that is carried in less than carload lots is a part of the freight, whether we consider state or inter-state freight, that adds to the increased cost of handling?

A. Yes.

Q. Do you know what the percentage of way freight carried by your Company in the State of Missouri is inter-state and what part is state freight?

A. No, sir, I have no definite figures.

Q. Don't you think that in order to give an intelligent opinion on the relative cost of carrying state freight and carrying inter-state freight that it would be necessary to know the proportions of
1053 way freight that entered into the two classes?

A. I base my opinion entirely upon my knowledge of the movement of the business. The state business of Missouri is always very largely from the markets of St. Louis, Kansas City and St. Joe, all within the State.

Q. You heard the testimony of Mr. Harris yesterday in which it

was shown that a large part of the way freight went from your main line in Iowa down across the State line into Missouri?

A. There is some of that business, but I do not think a large percentage.

Mr. HAGERMAN: I think you are mistaken about a large part. He said a part of it.

A. It does not seek that market.

Mr. KENNISH:

Q. You say you have no definite knowledge upon that subject?

A. I don't know in pounds or in revenue.

Q. You speak about the cost per ton per mile: what do you mean by that expression "per ton per mile," Mr. Miller?

A. I mean the average cost of handling the local or through business per ton per mile.

Q. Either business?

A. Yes.

Q. Is that the unit you base your premise upon?

A. The unit is the train mile cost.

Q. That is one system: and the ton mile is another?

1054 A. If you arrive at the ton mile, you simply divide your ton mile cost by your tons per train.

Q. Have you made any computations, since this litigation arose or before that, as to the relative proportions of way freight, either in interstate of State traffic, per ton mile?

A. No, sir, I have not.

Q. Has any such computation been made by the company of which you are vice-president, the Burlington Company?

A. I have not seen any. I don't know of any.

Q. Do you know whether such estimate has been made by any other companies?

A. I believe some of them have made them. You mean to separate the local from the through business?

Q. Yes.

A. I don't think they do. I don't know of any such.

Q. To ascertain the number of tons per mile in each class of freight we have been discussing?

A. Personally I don't know of any such.

Mr. HAGERMAN: You mean separate statements showing the State freight as distinct from the interstate freight?

Mr. KENNISH: Yes.

Q. You know that that would materially aid us in getting at the question as to the reasonableness or unreasonableness of the freight rates fixed by the Act of 1905, don't you?

1055 A. If that represented the actual cost, and you based the reasonableness entirely upon the cost of doing the particular local business, it probably would.

Q. You have heard some experts testify here on behalf of your company, that the ton per mile basis was the only direct basis upon which to make an estimate of the cost of carrying freight, haven't you?

A. I believe I have, yes.

Q. It is a fact that you have the data in your possession by which the tons per mile, both of State and interstate freight, of through freight and less than carload lots freight, could be accurately and definitely ascertained, haven't you?

A. Not that I know of.

Q. Couldn't those facts be obtained from the way bills, and the knowledge of the distance between stations, between which the freight was shipped?

A. Yes.

Q. Then why couldn't you get the data mentioned from those way bills?

A. I understood you to ask if I had that data compiled.

Q. I referred to the Burlington Company, and asked you as representing the company?

A. That could be compiled from our records, certainly.

Q. Can you give any reason why it has not been done in this case?

1056 A. Nothing more than the expense. We don't keep our records in that shape, and it is pretty expensive to make that up, unless it is required.

Q. You heard Mr. Gray, of Minneapolis, testify the other day in regard to the rates that he made an estimate on, in Minnesota?

A. I heard part of his testimony.

Q. He testified that he selected two months in the year 1905 as being typical of the entire business of the year, April and October, and ascertained the tons per mile carried during those two months, and then estimated the tonnage for the year on that basis?

A. Yes.

Q. That could be done without going to any very great expense, by any road?

A. That could be done. Just what the expense of that would be I don't know, but it would be considerable.

Q. But you think that could be done with a little less expense than it would to take the whole year?

A. Oh, certainly.

Q. And even if you took two weeks, at different times of the year, that would give an intelligent basis to estimate the relative proportions of the different classes of freight we have been discussing?

A. It would give a basis, yes.

Q. I will ask you if in looking up these figures and dis-

1057 cussing the reasonableness or unreasonableness of the rates in question, you have not considered the question of making an estimate of the actual tons per mile of the different kinds of freight affected by this new law?

A. We did consider having it made up for a year, but it took so long and was so expensive, that we gave it up.

Q. You did think it would be valuable, in getting at the question of the reasonableness of the rates under this law, and the only thing that prevented you was the expense and the labor necessary to get that information?

A. We considered that we could estimate it quite accurately enough from our earnings, taking the percentage basis, and save expense.

Q. And that was the only reason considered?

A. That is the only reason I know.

Q. That caused you to omit getting that information, the tons per mile, that and the expense of obtaining it?

A. That is the only reason I know of.

Q. And will you say now you have no definite knowledge as to the relative percentages of these different classes of freight?

A. I have no definite knowledge, except we know what our revenue is on our local business and our through business.

Q. But the revenue is affected largely by the rate that obtains in each class of freight?

A. Yes.

1058 Q. And if the rate is much higher, then the tons per mile would necesarily be lower to earn the amount of money in the gross earnings of each class?

A. That is true. But if the average rate per ton is higher, it is due entirely to the short haul, where the expense is very much greater than the average.

Q. You spoke about the effect of this law of 1905 on the rates applicable to the carrying of live stock. Mr. Crosby gave an example, before dinner, of a shipment from Brookfield to Chicago, interstate live stock, and over the same route on your line from Brookfield to Hannibal: you heard him give the figures on that?

A. Yes.

Q. The distance from Brookfield to Hannibal, I believe was 103 miles?

A. That is my recollection.

Q. And from Hannibal to Chicago?

A. 266 miles, I think it is.

Q. Nearly three times the distance. But the rate received by the company on a carload of live stock from Brookfield to Hannibal, a distance of 103 miles, I believe was $25.00, under the rates in force before the law of 1905 went into effect?

A. I think that is right.

Q. And the rate that Missouri would receive on the through shipment from Brookfield to Chicago for the same distance would be only $15.00: is that right?

1059 A. I think that is right. It is approximately correct.

Q. Does not that show that the company would make less in the through shipment than it would make on the State shipment?

A. It does in that instance.

Q. Because the shipment from Brookfield to Hannibal would be practically a through shipment, even on the State shipment, wouldn't it?

A. Yes.

Q. Because it would be a shipment passing entirely across one freight division?

A. Yes. That grows out of the fact that the Chicago rate is on a

differential basis and it gets the benefit of the Chicago market. It is a reciprocal arrangement, that division.

Q. What is that?

A. Missouri gets the benefit of the differential rate and the Chicago market; and the division, if on a mileage basis, if reciprocal, must necessarily be fair. While in one case it might get less than its local, it may get more in other cases.

Q. It simply gets its proportion of the entire rate received from the shipment, according to the mileage basis?

A. Yes.

Q. According as the mileage in Missouri bore to the mileage in Illinois, in that shipment?

A. Yes.

1060 The MASTER:

Q. Could a carload of cattle be shipped from Brookfield to Chicago over your system, as far as Quincy from Hannibal, and by way of the Wabash then to Chicago, at the figure you have given?

A. No, sir. We have no joint rates in Missouri, on a case of that kind. If it went by the route you speak of it would pay local to Quincy, and local from Quincy to Chicago.

Q. Which would be higher than the through rate you mention?

A. Yes.

Mr. KENNISH:

Q. Where you have a joint rate in effect with another road, it is usually the same that the rate would be if your road ran the same distance that the shipment is carried?

A. Yes.

Q. In fixing the rates for a shipment of freight, do you take into consideration the building up of the industries along the line of your road?

A. Yes. We aim to adjust them so that they can find a market for their product against their competitors.

Q. If the local rates are lower than the cost of handling the business, there would be no object in the railroad building up the traffic at any point where it would result in increasing the local traffic and not the through traffic?

A. We could not afford to adjust all our rates so they
1061 would make a loss. We would not be in operation long, if we did.

Q. You do not think there is a loss in the entire business done in Missouri, as State business, do you Mr. Miller?

A. I certainly don't think we make any profit out of it.

Q. You do not think you are making any profit?

A. No, sir.

Q. You make the most of your profit out of the through shipments, you think?

A. Yes, sir.

Q. And on the through lines?

A. Undoubtedly.

Q. But isn't it necessary for you to have those branch lines as feeders for your through lines, and if you don't have these branch lines you would not have the business for your through lines?

A. I simply think we would be better off if we didn't have some of our branch lines.

Q. There are probably some branch lines on every road, that is constituted of lines making a large system of railway, that are unprofitable?

A. Very.

Q. And the road would be better off in that case without such branches?

A. Yes.

Q. But, as a general proposition, in a large railway system, you must have branch lines to bring freight to the main or
1062 through lines, in order to get the through business: isn't that true?

A. Many of those lines are very valuable and desirable, but not all of them.

Q. Take your through shipments of live stock to Chicago: don't many of those shipments originate along the branch lines, and are carried for some short distance on the branch line before reaching the trunk line?

A. Yes.

Q. Isn't it a fact that a large percentage of such freight originates in that way?

A. Yes, sir, quite a large percentage. We have so many branches, that a large percentage of our business originates that way.

Q. And in order to get the profit you realize from carrying that freight on the through lines you must have the branch lines, in order that it may reach the through line?

A. Yes. But a great many of those are so that our competitors cross those lines, and they get the business. The main line service is so much better. But we do get considerable business from those lines.

Q. From the branch lines?

A. Yes.

Q. You get practically all of your business, or more than half at least, from the branches that connect with your through lines?

A. From our branch lines and connections, yes.

1063 Q. I understood you to say that the reasons given by Mr. Crosby, for the less rate fixed in the list handed in by him before dinner, which was marked exhibit — were reasons that met with your approval?

A. Yes.

Q. Will you give those reasons yourself?

A. I don't know that I can recall all of the reasons for every one of those commodities, but they are made necessary by commercial conditions or competition.

Q. Then that would not be a reason for the reduction of any rate below the legal rate, at a point where there was not competition?

A. Commercial or competitive conditions.

Q. What do you mean by "commercial conditions"?

A. There might be competition of commodities; for instance, the illustration of the cement rate from Hannibal to St. Louis. The Hannibal factory in order to get into St. Louis, has to compete with the cement factory right in the city limits of St. Louis, and it takes a very low rate to permit them to get into that market.

Q. Consequently, you have fixed a rate on cement much below that fixed by law?

A. Otherwise, we believe we would not get any revenue from that business. It is either take the small revenue, or none at all.

Q. Does your cement business from Hannibal pay a profit
1064 to the company above the operating expenses?

A. We think it does, under the conditions.

Q. What is your rate, compared with the statutory rate?

A. I could not give that from memory. That is a matter of record.

Q. It is much lower than the law fixes it?

A. Four against seven, yes.

Q. Do you know whether you have any rates in effect on the Carleton branch from Browning and Linneus, where through trains are operated, on agricultural implements and furniture, which are lower than the rates prescribed by the tariff of the Railroad and Warehouse Commissioners?

A. I have never checked those rates.

Q. And where there is no competition?

A. Is that a case where it is due to the long haul?

Q. You don't know anything about that?

A. No, sir, I have not checked up those figures. It may be.

Mr. CROSBY: If I can make a statement, I could explain that.

The MASTER: By consent of counsel Mr. Crosby makes the following statement touching the subject under consideration.

Mr. CROSBY: They have a rate, if I remember, on wagons, from Carleton, Missouri, to Kansas City and St. Joe. My recollection is, it is ten cents, or somewhere in that neighborhood. We
1065 are, of course, the longer line as compared with the Wabash or the Santa Fe; and that rate was made to enable the manufacturer at Carleton to get into the next territory west, or get up into Iowa, or back again to the Mississippi River, where we stop. He has some of his raw material there, and others he has to have shipped in. We have competition at Carleton, Mo., two other roads there besides ourselves; while at Browning we have none. But there is a man who has to compete with competing points in the manufacture of his article—I believe it is hay rakes—and he has to ship in his raw material and ship out his manufactured article. We have to make a rate that permits him to ship his raw material into his manufacturing plant, and manufacture it there into the manufactured article, and ship it on west. Or, in the other territory, compete with manufacturers who are located farther east and have the benefit of the through rate from the Missouri to the Mississippi River. This man is paying a combination of rates in and out, that really exceed the through rate from the Mississippi to the

Missouri river. And if he exists at all he has to have that assistance. We could enforce the statutory rate but that would drive him out. And that is no way to help the Missouri manufacturer.

Mr. KENNISH: That is on wagons. The rate covers furniture and all agricultural implements.

Mr. CROSBY: I don't know whether they manufacture any furniture there or not. I am not familiar enough with it to say;
1066 but at the time that rate was in effect we used on our tariffs the same description exactly as was used by the Commissioners in class J, or whatever commodity took the furniture rate. That is where that phraseology came from. My recollection is they do not make furniture there. My recollection is that it is an agricultural implement, or a wagon—well, a wagon is an agricultural implement.

Q. You made that rate, as traffic manager?

A. I sanction the rate. We have a man locally in charge of the Missouri business, who is in touch with the local conditions there, and acts under our advice.

Q. In sanctioning that rate were you adopting a policy that would cause your company to handle the product of that factory at a loss, in order that the manufacturer could profitably manufacture wagons?

A. I do not care to say that the conditions surrounding that would result in that. But I do say, we made a rate on the raw material and, as a matter of fact, that rate has been in effect there ten years.

Q. You think the company did sustain a loss on business done under those rates?

A. I do not know that in the way of indirect business they did. We would not voluntarily spend a dollar to get back 50 cents, or 90 cents.

Q. You think that although the rate was below the Commissioner's rate, it was one that made a fair return to
1067 & 1068 the company the cost of the service?

A. I don't know, but I don't believe it was below the Commissioner's rate for the short line. It may have been slightly; but we considered, with the commercial positions, if that manufacturer was to exist there, considering what he had to pay on raw material in and on the manufactured out, that combination of rates was necessary.

Q. Did he have to ship over your road to get his raw material in?

A. To Carleton?

Q. Yes.

A. Not necessarily. Our rate is the same as the Wabash or the Santa Fe. I don't know but that they established the rate.

Q. Then the shipping in of the raw material is not an element that you should consider in fixing the rate for the manufactured article out?

A. The element of raw material in and manufactured article out, has to be considered in adjusting rates. That is one of the commercial conditions.

The examination of Mr. Miller is here resumed, as follows:

A. (continued). You would not pick out one commodity and say whether the rate on that one commodity was paying.

Mr. KENNISH:

Q. What did you say?

A. I understood him to say, whether that one particular
1069 rate yielded a profit or not. No one knows what the cost of handling any one particular item or transaction is.

Q. But you are making the contention that the cost of handling one item of live stock is much in excess of the rate allowed under the law of 1905?

A. I think the proposed rates on live stock are less than the actual cost of doing the business. I think their rate for 20 miles is $6.00. Assuming you get the very best handling out of your cars, it won't pay over a dollar and a half a day for the car and transportation.

Q. But as I understand you, it is not fair to take one item and say whether or not that particular item will result in a profit or loss to the company; but you take the whole schedule.

A. Any commodity that is lower than the certain, actual cost, is certainly unreasonable, according to the way I view it.

Q. Didn't you give the reason, on the case we were considering, the rates on wagons from Carleton, that although it might be a loss, it was not fair to take that alone into consideration, if other articles might make up for the loss on that one?

A. I do not justify any rate that is less than the actual cost of doing the business.

Q. You do not justify them?

A. No, sir.

1070 Q. Then you think the company would never be justified in charging a lesser rate than the cost of the service of doing the transportation, than that reasonably would be worth?

A. No, sir.

Q. It would never be justified in doing that, you think?

A. I don't think it should voluntarily do so.

Q. And what do you think about whether or not it does do that, voluntarily?

A. I don't think it does so voluntarily, though it does so.

Q. You concur with Mr. Crosby, that the rates in effect during the enactment of the 1905 law, considering commodity, class, and distance, were fair and reasonable; and that you had no complaint to make as to the rates fixed under that law?

A. I think all our short haul rates are lower than they should be. I don't know but these rates are substantially forced upon us. They have been in existence for years. We didn't make them.

Q. Did you make any complaints as to the rates in existence before the enactment of the law of 1905?

A. Not that I know of.

Q. Didn't you then consider that they were reasonable?

A. I found them in effect when I came here. They were made by competition and law and so on.

Q. If they were unreasonable, and you were put where it
1071 was your duty to look into the matter of transportation or traffic rates, wasn't it your duty, as an official, to see if you could not increase the rates to a point where they would be reasonable—reasonable to the shipper and the company?

A. I don't know how I could undertake to raise any of our rates in Missouri above what they are.

Q. Some of them, you say, are now below those fixed by law?

A. Yes, sir.

Q. You would not have any particular trouble in knowing how to raise them, would you?

A. We could advance those so far as the law goes, yes; but you could not advance them and handle any business. On those commodities we are handling, the circumstances seemed to justify us in undertaking to handle them.

Q. Where the circumstances justify you in undertaking to handle them at rates below the law, you would still do the business and make a profit?

A. We thought so.

Q. If you could do it on particular commodities, where the rates have been voluntarily reduced much below the legal rate, there are probably many other items of freight in which you could take the same course, couldn't you, if the necessities of the situation demanded it?

A. If the volume of business would justify it.

Q. And the competition?

A. Competition or volume, but particularly volume. The
1072 more we can build up our local business, the more the average cost would be reduced, and the more chance there is to make a profit. It is our effort all the time to try to build up the local business.

Q. And you make a particular effort to build up your local business?

A. We try to.

Q. That is not because it is unprofitable?

A. We want to make it profitable.

Q. By building it up?

A. Yes.

Q. And doing more of it?

A. Yes.

Q. And if you are doing it at a loss, it would be of no advantage to the company to build it up, because you would just increase the loss?

A. By increasing the volume we decrease our average cost.

Q. Taking your system in Missouri, the volume of the business is very good. The country your line travels through.

A. I think we figured it is about ten per cent of the total tonnage.

Q. The Burlington lines in Missouri are in the very best part of the State, the agricultural lands?

A. I think so.

Q. And the part of the State that is used for the production of live stock, grain, and all agricultural products?

A. Yes.

1073 Q. So from the standpoint of volume and density of traffic, your road is probably more favorably situated than any other road in the State of Missouri, isn't it?

A. It ought to be and it probably is.

Q. What do you think, Mr. Miller, about the basis upon which Mr. Sturgis apportioned the cost of the state and interstate business of the road?

A. I have only seen part of his testimony, but I understand it is on the revenue basis. It seems to me that is fair and reasonable as any basis.

Q. I believe that Mr. Sturgis adopted the rule of taking the percentage of State business to interstate business, and multiplying it by three?

A. Yes. Assuming that the cost of the State business was three times that of the interstate.

Q. He assumed that?

A. He estimated it at that.

Q. And the total cost of all the local traffic in Missouri, according to the percentage resulting from multiplying the percentage of State traffic by three?

A. Yes.

Q. And then apportioning it in that way?

A. Yes.

Q. Wouldn't that basis necessarily result in a loss on the State traffic, no matter how high the rate on State business might be?

A. I do not see why it should so result.

1074 Q. You take an instance and assume the rate on State traffic to be whatever you may see fit to place it at, and see if you won't come out with a loss on the State traffic. I believe that the percentages in the statement given by your company——

A. Does not that mean the same ratio in proportion?

Q. I believe the revenue received from State traffic was $1,525,000?

A. Twenty per cent.

Q. Twenty per cent of the total freight business?

A. Yes.

Q. The gross earnings on the interstate business were about $6,000,000; now, take any given commodity; you are familiar with the methods of figuring the cost and profits on a shipment; I want you to take some shipment, and adopting Mr. Sturgis' basis, figure any rate you please, and see whether or not business in Missouri will not be done by the company at a loss?

A. I must confess I do not know just how to figure what you want.

Q. I want you to figure on any shipment that is State freight business, and adopting Mr. Sturgis' system, show to the Court that it

is possible for the company, in any case you may assume, to make any profit on a State shipment?

A. It might take me some little time.

1075 Q. Wouldn't you have to have the percentage of cost of gross earnings on all business to be so low, that when three times the percentage of the cost of State business to gross earnings was added, the total would make a percentage of less than 100, in order for it to be possible for State business to pay any profit to the company? In other words, when you take three times the percentage of the cost of State business, to the gross earnings, and that added to the cost of the interstate traffic to all the gross earnings, would not the combined amounts be more than one hundred; and then in that case the State business would necessarily result in a loss to the company. That is the point I make—I am not sure whether it is clear or not.

A. I don't know. I have never figured on it, and I don't know.

At this point the further hearing of testimony was by consent of counsel adjourned to Tuesday, October 30th, 1906, then to be resumed at the Federal Building in Kansas City, Missouri.

On account of the illness of Judge O. M. Spencer, counsel for the Burlington Railway Company, by consent a further adjournment was made to Wednesday, November 7, 1906, then to be resumed at the Federal Building, in Kansas City, Missouri.

1076 The testimony of the witness Henry A. Gray, commenced on Wednesday, October 24, following the testimony of Mr. Willard, was written out of order and is placed here as a matter of convenience.

1077 HENRY A. GRAY, a witness of lawful age, having been duly produced, sworn, and examined, testified in behalf of the railroad companies, as follows:

Direct examination:

By Mr. O. M. SPENCER.

Q. Will you please give your name, place of residence, and official position?

A. Henry A. Gray; St. Paul, Minnesota; comptroller of the Northern Pacific Railway Company.

Q. How long have you been connected with that road?

A. Nearly ten years.

Q. Have you had occasion to look into the cost of doing local business, state business, as compared with through business, on your railroad?

A. I have looked into and made an investigation as to the relative cost of doing local business, and by that I mean business done on local trains, as compared with business done on through trains,

in the state of Minnesota, in connection with the hearing of the State of Minnesota, this past spring and summer.

Q. What position did you hold, prior to your connection with the Northern Pacific?

A. If I may begin at the beginning, I commenced railway service nearly 33 years ago, in the city of Chicago, with the Chicago Northwestern Road, and I continued in exclusively rail-
1078 way service until the 1st of January, 1886. I was then for 11 years secretary and treasurer of the Illinois Street Railway Company, and its constituent companies, having to do with their railway system, which was quite considerable. In February, 1897, I returned to exclusive railway service with the Northern Pacific.

Q. Have you recently given testimony in a suit of this kind, Mr. Gray?

A. I have.

Q. At what place?

A. In St. Paul.

Q. Before what tribunal?

A. Before the Railroad and Warehouse Commissioners of the state of Minnesota.

Q. I don't know what meaning you have given to the term "local business": we are talking about the cost of doing state business, business originating and terminating in the State?

A. It so happens that in Minnesota the investigation that I made, both as to local and through business, was all within the State.

Q. What is the relative cost of doing that business, all within the State, as compared with the cost of doing interstate business, in your opinion?

A. I have no opinion—that is, it would be only an opinion; but the evidence I gave before the Minnesota Commission was evidence based upon facts, facts ascertained in an investigation; and it was the relation of business done upon local or way trains, as
1079 compared with business done on through trains, all within the State of Minnesota.

I ascertained that the business done on local trains in Minnesota, the cost for handling and moving—and I wish to lay emphasis on those words, for handling and moving, or as Mr. A. B. Stickney of the Great Western, put it "for terminal expenses and straightaway haul," that was his phrase, but we both meant the same thing—I found that on the average of all business done during the period of my investigation, the cost for handling and moving on the main line only of the Northern Pacific Railroad, in the state of Minnesota, was at least 7 times as much as on the through trains. And taking the less than carload rate embraced in the business, it was at least eleven and one half times as much.

Q. Would practically the same element of cost enter into the doing of the local business in Minnesota as would enter in Missouri or in any other well regulated railroad?

A. I believe so. They are both states bordering upon the Mississippi River, and I do not know that there are any conditions that are very radically different in the two states.

Q. Will you give us now the evidence or figures upon which you base that opinion as an expert, Mr. Gray?

A. Sundry comparisons have been made of the cost of what may be called variable elements of expense in — respectively.

1080 By variable elements I mean those elements that are largely and manifestly affected by the volume and character of the traffic.

I did not attempt to build up a total cost per ton per mile; but, rather, to make such a comparison as would help in determining whether the proposed reduction in rates is reasonable.

As we all know, and it has been brought out here already, the interstate classification, and the classifications of the various States, sub-divide the operating expenses of a railroad company into four main groups. I may say that hereafter there will be five groups, after the Interstate Commerce Commission succeeds in unifying the accounts of the railroads.

Those four are: maintenance of way and structures; maintenance of transportation; conducting transportation; and expenses. Every one here probably has at least a general idea of what is embraced in those four subdivisions.

Now, in considering this question of cost, the maintenance of way and structures has been omitted, for the reason that it is impossible——

Q. Do you mean in this case?

A. I mean in the evidence I gave before the Minnesota Board of Railroad Commissioners. For the reason that it is impossible to determine, even approximately, the proportion of such cost

1081 applicable to any short business. Perhaps I had better explain what I mean by that. We are building a railroad today, say—and I have one in mind—and we lay that railroad with new steel rails, of say 80 pounds to the yard. We build it as a main line, to do a heavy, rapid traffic. Accordingly we put in it the best ties we can procure. We put in it all the ballast that can be put into a new road. Now, those rails ought to wear twenty years, and those ties ought to wear ten years. The ballast ought to last for several years before it is renewed; that depends upon the character of it and how it is put in. But suppose that a road is having its rails renewed largely in any one year. That will carry with it, on a well managed road, the renewal of the ties, and it would not be fair to charge against the traffic of any one year, or any two years, the cost of the renewal of the rails and ties that might be laid in that year. The same thing is true as to ballast. Therefore, I claim that it is impossible to apply to one year, much less to any shorter period, a definite amount of the cost of the maintenance of way and structures.

Second, because it is impossible to distribute such cost between freight and passenger business, much less between through and way trains. Therefore, in my calculations, and in preparing my evidence, I put the maintenance of way and structures out of court altogether.

Mr. HAGERMAN:

Q. It is not included in your estimate?

1082 A. No, sir, I do not include it at all.

The group of accounts known as "general expenses" has also been omitted, as they bear no direct relation to the conduct of any particular class of traffic. Suppose there was a cyclone or such weather that the road stopped for a couple of weeks. My salary, I hope at least, would go on, and the salaries of the other general officials and the clerical help would go on; and what are known as "general expenses," bear no relation whatever to any particular class of traffic. Therefore, in making my calculation as to the relative cost of doing through and local business I have confined myself to what I have said before, the cost of handling and moving the traffic.

Of course, that leaves out a very large proportion of the expenses, and it also leaves out the interest on the bonds, and carrying it further still it leaves out the dividends on the stock.

In considering this thing, after you have considered the bearing of the cost of handling and moving the traffic, then it is a reasonable thing to consider how much of the amount you receive for doing the business, should be applied, say to an average maintenance of way charge, and how much should be applied to take care of general expenses, how much is necessary to pay taxes, interest on bonds, and, if there is anything left, to pay a dividend on the stock. Now, with that understanding I will pass on.

1083 The comparison made by me is based on what is known as, "cost of conducting transportation," special calculations being made for what is known as "terminal expense." That is, I built up my terminal expense, as a unit. It will be seen as I go on that I group the expenses I took, under four heads. I built up my terminal expense as a unit, and included three things in the terminal expense; the cost of switching carloads, or cars, of any kind; the cost of warehouse expense, of business that must go through the warehouse; and the cost of clerical or office expenses. The comparison made by me is based on what is known as "cost of conducting transportation," special calculations being made for what is known as "terminal expense," and maintenance of equipment, using, not the charges for any specific period, but a proportionate cost based on experience and taking into consideration the interest on the value of the property used exclusively for repairs and maintenance of locomotives and cars.

The unit of cost used in stating the relative items has been the gross ton mile. As this represents the load that has to be moved whether the cars are loaded or empty—I am sorry that in what I have heard here in this evidence the expression "gross ton mile" has not been used, because for the purpose of determining the relative cost of doing railroad business it will have to be recognized in the future, and it has been recognized by scientific men already,

1084 that the only true unit of determining the relative cost of doing railroad business is the gross ton mile.

General HADLEY:

Q. May I ask what the witness considers the comparison between gross ton mile and ton mile?

A. The gross ton mile is the number of tons in the car, including the weight of the car and its contents, multiplied by the number of miles haul. The ton mile, is simply the weight of the contents.

The final results have been stated in cost per net ton mile—that is, what you have heretofore spoken of as ton mile—that is, a ton of paying freight carried one mile.

In order to arrive at the transportation expenses a statement of the operation of the main line way rates on the Northern Pacific Railroad, in Minnesota, for the months of April and October, 1905, was drawn off, securing data as to mileage, tonnage, cost, etc.

The reason why we confined ourselves to the months of April and October was that they were representative months, April being a spring month and October a fall month, and fairly representative; and also because the time given us by the Commission to prepare our evidence was very short.

We had no record of the average haul of through freight, I regret to say. There was not time to ascertain that. But the
1085 average haul for the entire road of all freight during the fiscal year 1905, was 334 miles. I know that that is less, but it is fairer to the State to take that, in making out my calculations, because I know that on our business the average haul of through freight is considerably in excess of that. In fact, for this last year, 1906, it is seven and a fraction.

General HADLEY:

Q. Miles more?

A. Yes.

Q. You are speaking of the State of Minnesota?

A. Yes, I am speaking of the whole railroad.

Q. You used the word "State": do you mean the State of Missouri?

A. No, sir, in every case it is Minnesota; evidence I prepared for Minnesota. The average haul for the entire road of all freight during the fiscal year 1905 was 334 miles. The average haul of business local to Minnesota in 1905 was 110 miles, as shown by our report to the State, and these figures have been used by me in making up these calculations.

Our train schedules show that the average distance per day covered by way freights is about 40 per cent less than through freights; or, stating it the other way around, my recollection is that the through freights, as shown by the schedules, were 40.78 per cent more than the way rates.

The results for April and October show a cost per way
1086 freight train mile for movement expense,—what Mr. Stickney calls the straight-away haul of 10.58 per cent in excess of through freights. So these figures may, for comparative purposes, be tabulated as follows:

Taking the train movement cost unit as sixty cents per train mile on through freights, adding 10.58 per cent, would make the cost per train mile on local freights .6635 per cents. The gross train load, as ascertained by our examination of those two months, and by that I mean the gross ton miles, on through freights was 1187.6 tons and on local freights 801.2 tons. On that basis the comparative cost per one thousand gross ton miles would be, on through freights .5052 and on local freights .8281 cents.

The average weight of the contents of cars in through freights was found to be 37,600 pounds. This is lower than our present average for the whole road. A test during the month of March, 1906, showed that the contents of merchandise cars in less than car-load lots in Minnesota averaged 5,350 pounds.

I will explain what that test was: I put ten experienced clerks in charge of our chief traveling auditor, provided them with thousands of blanks upon which to make reports, and had them ride on the trains for a period of several days, and take account of every pound of freight that was put off the train and every pound that
1087 was put on. I did it that way instead of taking the reports from the conductors, because the conductors of way freight trains are very busy men and are liable to make mistakes. I believe that in that way I got a fairer and more accurate result.

Among other things ascertained was, that the less than carload lots averaged 5,350 pounds per car, or less than two and three fourths tons.

Our report to the State of Minnesota showed that empty freight car mileage was 35 per cent of the loaded car mileage for the fiscal year ending June 30, 1905. In other words, that for every one hundred loaded cars hauled, there were 35 empty ones.

Now, the compensation for the use of an engine was figured as follows: on way freights I took a lower valuation for the engines, than on through freights. That seemed to be recognized by the gist of the evidence I heard given yesterday and today.

I assume the value of an engine in a way freight train to be $14,000, which at 5 per cent per annum would be $700.

General HADLEY:

Q. You assume the money invested?

A. I assume that is the average value of the engines in use. They may have cost originally $18,000, but the average value of engines in use would be $14,000.

The depreciation at 6 per cent per annum would be $840.
1088 I have been criticized for making that depreciation so low, but I may say, and say it truthfully, that I have aimed to be on the safe side in all the figures I have used in making these calculations.

Use of the plant, including shop buildings, machinery, tools, side tracks at shops, round houses and stock of material, estimated at six million dollars, at 5 per cent per annum, apportioned to 915 engines, amounts to $327.87. This makes a total of $1,867.87.

The value per mile, based on 30,000 miles per annum (that is

our experience in round numbers) would be 6.22 cents. The average repairs per engine mile for the fiscal year 1905, based on our statistics, would be 6.83, making a total of 13.05 cents per engine mile, for the use of an engine in way freight trains.

On the through freights, the value of an engine I assume to be $17,000, which at 5 per cent per annum would be $850. Depreciation, at 6 per cent per annum $1020. Use of plant, as given before, $327.87, making a total of $2,197.87.

The value per mile, based on 30,000 per annum would be 7.33. The average repairs per engine mile 6.83 cents, making a total of 14.16 cents.

Compensation for the use of cars is figured as follows:

1089 Estimating the value of a car in merchandise service at $750; car repairs, based on our experience for the year, at .324 cents per mile, and that all cars average about thirty miles per day, we get the following as representing the value of one car per day:

5% interest per annum on value	$37.50
6% depreciation as per master car builder's rule	45.00
Use of plant (including shop buildings, machinery, tools, side tracks, including detached repair tracks and stock of material, estimated at two million dollars, at 5% per annum, apportioned to 38500	2.50
Making a total of	$85.10
Which equals per car per day	23.31¢
Repairs 30 miles at .324¢	9.72¢
Making a total interest, depreciation and repair charge per day of	33.03¢
An average of 30 miles per day would yield a rate per car mile of	1.101¢

The terminal service: the cost per ton for terminal service, including interest on the fair valuation of the property, is based on results at the St. Paul freight house and yard which are used by the Northern Pacific, Minneapolis and St. Louis, and Soo lines, and on which we have a record of the rentals paid for the use of the property.

The average cost per ton is found to be approximately 78.76 cents.

Assuming that the class of service could not be performed at
1090 stations along the line for less than it costs at St. Paul, where the volume of business is heavy, the cost for merchandise within the State would be approximately 8 cents per hundred weight. That is on the two terminal charges that Mr. Willard spoke of, say 4 cents per hundred at each station, for what is commonly called station service.

This is made up as follows:

Cost of handling, including use of property	55.16¢
Cost of office work, billing, etc	4.82
Cost of switching	18.78¢
Total Approximate cost	78.76¢

I will say that for going on two years now we have kept separately, at our large stations, the cost of doing this business, in order to know what we were doing, for our own purposes.

Carload freight:

Cost of switching, including use of property	71.41¢
Cost of office work, billing, etc	4.74
Total approximate cost	76.15¢

You will notice I have separated those terminal expenses into warehouse, office and yard; and that will be more evident as we pass on.

Now, taking this foundation, I beg to reiterate, the cost of 100 cars of through and local freight is my first example.

Applying the foregoing data to 100 cars of each class of freight, the following comparison is reached:

100 Cars of through freight:

1091 Weight of cars—16 tons that is a fair approximate average	1,600
35% for empties	560
Contents at 18.8 tons	1,880
Gross weight	4,040

Taking first the train movement cost,

4,040 tons 334 miles produces 1,349,360 Gross Ton Miles at $0.5052 per 1000 miles	$681.70

Use of Engine:

Average gross train load of through freight is 1,187.6 divided into 1,349,360 produces 1,135 Engine miles.

1,135 Engine Miles at 14.16 cents	160.72

Use of Cars:

Use of cars, including 35% for empty movement 45,090 miles at 1,101¢	496.45

Terminal expense—the question asked Mr. Elliott yesterday reminded me of what we did here.

I charged the through freight with three switchings, because in our practice it is so. The local freight I charged with only two switchings. Switching three

times would be equal to four hundred and five cars at 71.41 per car, or $289.21	289.21
Office work, 100 shipments multiplied by 2 equals 200 at 4.734¢, amounts to	9.47
Making a total cost of handling and moving 100 cars of through freight	$1,637.55

The contents of those cars, as shown before were 1880 tons multiplied by 334 miles, produces 627,920 ton miles——

1092 General HADLEY:

Q. Is that gross?

A. That is not, but the cars carry, what we have to apply to cost in order to determine whether the business is profitable or not.

Q. What is the total amount?

A. The total ton miles is 627,920 ton miles, making the comparative cost per ton one mile, for handling and moving .2608¢.

Judge SPENCER:

Q. Is that all on the through?

A. Yes.

Q. What is that last figure?

A. .2608¢.

General HADLEY:

Q. For what?

A. For cost of handling and moving a ton one mile, a ton of through freight.

Now, we take one hundred cars of local freight:

Weight of cars 16 tons	1,600 (tons)
35% for empties	560

Someone perhaps will jump on me and say "you should have put a larger per cent on local cars; but as I have no figures on that I am willing to give the State the benefit of whatever that may be. The next item is,

Contents at 9.75 tons 975

1093 That was ascertained by our test to be the average load of all cars moved in the test. While as I said the less than carload freight was less than 2¾ tons per car, the average of all the business carried during the test was 9¾ tons.

That makes 975 tons, or a gross weight of 3.135

Now, taking first the train movement cost:

3/135 tons 110 miles produces 344,850 Gross Ton Miles at $2.81 per 100 miles	$285.57

Use of Engine:

344,850 Gross Ton Miles divided by average train load of 801.2 tons produces:

430 engine miles at 13.05¢	$56.11	
Add 40% for extra time on road	22.44	
		78.55

Use of Cars:

100 cars 110 miles	11,000		
35% for empties	3,850		
	14,850 at 1.101¢	$163.50	
Add 40% extra time on road		65.40	
			228.90

Terminal Service:

Switching 135 cars x 2—270 at 71.41¢	192.81
Warehouse handling 975 tons x 2—1,950 at 55.16¢	1,075.62
Office work—1950 tons at 4.82¢	93.99
Total cost	$1,955.44

Contents of 975 tons x 110 miles produces 107,250 ton miles, making comparative cost per ton one mile..... 1.8233¢

That is on local business, for handling and moving.

The through business cost is..... 0.2608¢

Percentage of cost of local business to through business on that basis is 699.1%, or almost exactly seven times.

The MASTER:

1094 Q. Referring to your last conclusion, Mr. Gray, let me see if I understand you:

That it costs nearly exactly seven times as much to move a ton of freight——

A. To handle and move.

Q. Well, to handle and move a ton of freight a mile on the local train as upon the through train?

A. Yes. Another example is one based on——

General HADLEY: May I ask a question? And that applies to carload shipments as well as less than carload shipments?

A. What?

Q. The expense of handling a ton of freight per mile on local as well as through trains?

A. Yes.

Q. That applies to carload as well as less than carload shipments?

A. Yes.

Q. They entered into the comparison of both trains?

A. Yes. My second example is the business covered by the proposed tariffs, moved out of St. Paul in April and October of 1905. When I say "proposed tariffs" I mean merchandise tariffs. I un-

derstand that the same classes of tariffs are in question on both States; classes that pertain to 1, 2, 3, 4, and 5, and A, B, C, D, and E.

Q. You mean Minnesota and Missouri?

A. Yes. However, my illustration is based on the Minnesota business.

1095 Judge SPENCER:

Q. Compared with the local cost, you mean—unless you care for that, I don't care for it, Mr. Hadley.

General HADLEY: Mr. Gray is an experienced man, and I will be glad to have any testimony he cares to offer. The witness is in the hands of Judge Spencer, but I shall be glad to have him testify as he desires.

A. In my first example I referred, if you please, to hypothetical lots of 100 cars each, one moved on local and the other on through trains. Now, I took the business moved out of St. Paul on the merchandise tariffs, for the months of April and October.

The less than carload business was

Less than carload freight	7,282,092	lbs.
The average carload for this class of business as per test made in March 1906 was	3,250	lbs.
This business therefore required about	1,380	cars.
Car load business was	3,873,161	lbs.
Loaded into	133	cars.
An average load per car of	29,121	lbs.
Total weight was	5,628	tons.
Number of cars used, computed as above	1,513	
Average load per car	7,440	lbs.
Tons one mile	916,419	
Average haul	162.8	mls.

These figures would produce the following cost:

1,513 cars at 16 tons each	24,208	(tons)
35% for empties	8,472	
Contents	5,628	
Gross weight	38,308	

Movement Cost.

38,308 tons 163 miles produces 6,244,204 Gross Ton Miles at 82.81¢ per 1000 miles	$5,170.82

Use of Engine.

6,244,204 Gross Ton Miles divided by average train load of 801.2 tons produces:

1096 7,794 Engine Miles at 13.05¢	$1,017.12	
Add 40% for extra time on road	406.84	
		1,423.96

Use of Cars.

1,513 cars 163 miles	246,619	
Add 35% for empties	86,317	
	332,936 at 1.101¢	3,665.63
Add 40% or extra time on road		1,466.25

Terminal Service.

Switching 1,513 cars twice—3,026 at 71.41¢	2,160.87
Warehouse expense, L. C. L. freight handled twice 3,691.5 x 2—7,383 tons at 55.16¢	4,072.46
Office work—133 car loads x 2—266 at 4.74¢	12.51
Office work—warehouse freight twice—7,383 tons at 4.82¢	355.86
Total Comparative Cost	$18,328.46

Comparative cost per mile (916,419 Ton Miles)	2.0000 cts.
Comparative cost of through business	0.2608 "
Percentage of cost of through business	766.9%

Or in other words, on this business out of St. Paul, the cost for the local business was 7⅔ times as much for the through business for handling and moving.

I want to give you one more example on this basis of less than carload business. The business figured under the first four classes, 1, 2, 3 and 4——

General HADLEY:

Q. You refer now to the freight classifications in Minnesota?

A. Yes. In the months of April and October, 1905, out of St. Paul. There were

1,380 cars at 16 tons	22,080
35% for empties	7,728
Contents	3,692
Gross weight	33,500

1097 Movement Cost.

33,500 tons 135.4 miles produces 4,535,900 Gross Ton Miles at 82.81¢ per 1000 miles	$3,756.18

Use of Engine.

4,335,900 Gross Ton Miles divided by average train load of 801.2 produces: 5,661 Engine Miles at 13.05¢	$738.76	
Add 40% for extra time on road	295.50	
		1,034.26

Use of Cars.

1,380 cars 135.4 Miles	186,852	
Add 35% for empties	65,398	
	252,250 at 1.101¢	2,777.27
Add 40% for extra time on road		1,110.91

Terminal Service.

Switching 1,380 cars twice—2,760 at 71.41¢	1,970.92
Warehouse expense at each end, 3,691.5 x 2—7,383 tons at 55.16¢	4,072.46
Office work—7,383 tons at 4.82¢	355.86
Total Comparative Cost	$15,077.86

Comparative cost per mile (499,824 Ton Miles)	3.0166 cts.
Comparative cost of through business	0.2608 "
Percentage of cost of through business	1156.7%

Or, in other words over 11½ times as much.

General HADLEY:

Q. On less than carload lots?

A. Yes, on less than carload lots.

Q. Now, perhaps the question would be asked, what rate did you get on that business? We got nearly 4½¢ per ton per mile. That is, we got about five times our average rate for doing the business, and it cost us eleven and a half times for that handling and moving.

1098 I want to call attention to the fact that these figures are based exclusively on main line operation. Branch line operation had to be excluded on account of the mixed train service. We wanted to get as near to actual service as possible.

General HADLEY:

Q. What do you mean by "mixed train service"?

A. On carrying both freight and passengers. The mileage on the Northern Pacific is

Main Line	572.68	or 59.3%
Branches	392.91	or 40.7%
	965.59	100%

Thus, more than 40% of the business on the branch lines, which necessarily costs more, had to be excluded in making this comparison. And to prove that that is so I will state that the great density, that is, tons per mile of road, on the branches, is less than one-tenth of that on the main line. Do you get my idea on that? That is, that the density of freight, the number of tons hauled one mile on

the branches, is less than one-tenth of the density on the main line. This, together with the cost of operation on the branches has a serious effect on the net results.

The MASTER:

Q. I was about to inquire, what is the ultimate conclusion reached in your second computation?

A. The conclusion is that on business out of St. Paul, during the months of April and October, 1905, it cost 7⅔ times as
1099 much for handling and moving local freight as through freight.

Judge SPENCER:

Q. On the business that went out of St. Paul you said 11½ times?

A. On less than carload lots.

The MASTER:

Q. What was the conclusion you reached on the third computation?

A. On the less than carload lots out of St. Paul in April and October, it cost 11½ times as much per ton per mile, as on the through business.

Q. That was confined in both these last cases to freight out of St. Paul?

A. Yes.

General HADLEY:

Q. And confined in both cases to less than carload shipments?

A. No, sir, not in both cases.

Q. You compared less than carload lots on local to less than carload lots on through trains?

A. All the business on the through trains. The actual business on the through trains in those months.

Judge SPENCER:

Q. Did I understand you to say that all this was State business; that is, business you have compared was business handled in the State?

A. It so happened that it was all State, except what might have dropped across the Red river in the city of Fargo, but it was practically all in the State.

1100 Q. This is a comparison of the handling and moving of local business with through business?

A. Yes.

Q. In your calculation or computation you added the cost of terminal charges to the through business, didn't you?

A. I did.

Q. Three terminal charges?

A. Oh, no, not three terminal charges, three switching charges.

Q. And how many terminal charges on the through business?

A. Two.

Q. And you add a like number of terminal charges to the local business, or more?

A. The same. Two terminals.

Q. So if you were not including terminal charges on the through business the cost would be greater on local business, relatively?

A. Yes, certainly.

Q. Greater than seven times?

A. Certainly.

Q. Your illustration and comparison between local and through business would hold good as to local business which was State business and through business which was interstate business, wouldn't it?

A. Yes. I can answer that in this way: if the Dakota State line had happened to be moved 100 miles east of where it is,

1101 the result would be exactly the same, in my comparison.

Q. Assuming all the time that you included two terminal charges on through business?

A. Yes.

Q. Now, this testimony you are giving here, was gotten up for the Minnesota case?

A. Yes.

Q. You had no idea of testifying in this case?

A. No, sir, none whatever. I thought I was through with it forever.

Mr. HADLEY: If the Court pleases, there are some general questions relating to this issue, which we wish to ask Mr. Gray, but there are some special questions based upon the figures given, which we could ask much more intelligently and helpfully to ourselves and the master, if we could be furnished with a copy of that testimony, or statement.

Judge SPENCER: I have a copy if you would like to have it.

General HADLEY: I don't want to go into an examination in reference to the figures given, without an examination of those figures. I should like to confine the examination now to general features.

Judge SPENCER: You said you wanted to ask Mr. Willard just one question.

General HADLEY: Yes, I should like to ask Mr. Willard about one point.

1102 COMPLAINANT'S EXHIBIT 7.

Northern Pacific Railway Company.

A. Estimated Loss under Proposed Tariffs.

A statement has been prepared showing for the months of April and October, 1905, the earnings received on business local to Minnesota and between Minnesota and Dakota points under existing tariffs; what would have been received under the proposed tariffs and the loss accruing therefrom. The months named are taken as typical months, and, it is believed, together show approximately what the

result would be for a year. On this basis the following estimated annual losses would be suffered by the Northern Pacific Railway if the proposed rates become effective:

On Minnesota business.....	$210,829.44	or 20.37%
On Minn.-Dakota "	15,866.52	or 7.13%
Total.....	$226,695.96	or 18.03%

Relative Cost of Transporting Through and Local Freight.

Sundry comparisons have been made herein of the cost of what may be called the variable elements of expense in handling and transporting through and local freight respectively. By variable elements is meant those items that are largely and manifestly affected by the character and volume of the traffic. It is not attempted herein to build up a total cost per ton per mile, but rather to
1103 make such a comparison as would help in determining whether the proposed deduction- in rates are reasonable.

In considering this question, the cost of Maintenance of Way and Structures has been omitted for the reason that it is impossible first, to determine even approximately the proportion of such cost applicable to the operation of any short period; and, second, because it is impossible to distribute such cost between freight and passenger business, much less between through and way trains.

The group of accounts known as "General Expenses" has also been omitted, as they bear no direct relation to the conduct of any particular class of traffic.

The comparison made herein is based on what is known as "Cost of Conducting Transportation" (special calculations being made for what is known as "terminal Expense") and "Maintenance of equipment" (using, not the charges for any specific period, but a proportion of cost based on experience, and taking into consideration the interest on the value of the property used exclusively for repairs and maintenance of locomotives and cars).

C. The unit of cost used in stating the relative items has been the Gross Ton Mile, as this represents the load that has to be
1104 moved whether cars are loaded or empty. The final results have been stated in cost per Net Ton Mile—i. e. the ton of paying freight carried one mile.

In order to arrive at the transportation expenses a statement of the operation of main line way freights for the months of April and October, 1905 was drawn off, securing data as to Mileage, tonnage, cost, etc.

We have no record of the average haul of through freight. The average haul for the entire road of all freight during the last fiscal year was 334 miles; the average haul of business local to Minnesota in 1905 was 110 miles and these figures have been used herein.

D. Our train schedules show that the average distance per day covered by way freights is about 40% less than through freights. The results for April and October show a cost per way freight train

mile of 10.58% in excess of through freights, so these figures may, for comparative purposes, be tabulated as follows:

	Through freights.		Local freights.
Train movement cost unit.	.60	cts. x 10.58%	.6635 cts.
Gross Train load—tons....	1187.6		801.2
Comparative cost per 1000:			
Gross Ton Mls.....	$0.5052		$0.8281

The average weight of contents of cars in through freights was found to be 37,600 pounds, (this is lower than our present average for the whole road) and a test during the present month
1105 shows that contents of merchandise cars in less than carload lots in Minnesota average 5,550 pounds.

Our report to the State of Minnesota shows that empty freight car mileage was 35% of loaded car mileage for the fiscal year ending June 30, 1905, i. e. that for every hundred loaded cars hauled there were thirty-five empty ones.

Engine, Train, and Telegraph Service, Fuel, and Contingencies.

E. Compensation for Use of an Engine is Figured as follows:

Way Freights.

Value of engine $14,000 at 5% per annum.....		$700.00
Depreciation at 6% per annum.....		840.00
Use of plant (including shop buildings, machinery, tools, side tracks, round houses and stock of material, estimated at $6,000,000 at 5% per annum apportioned to 915 engines.....		327.87
		$1,867.87
Value per mile based on 30,000 miles per annum	6.22¢	
Average repairs per engine mile, fiscal year 1905	6.83¢	
	13.05¢	

Through Freights.

Value of engine $17,000 at 5% per annum.....		$850.00
Depreciation at 6% per annum.....		1,020.00
Use of plant (as above).....		327.87
		$2,197.87
Value per mile based on 30,000 miles per annum	7.33¢	
Average repairs per engine mile fiscal year 1905	6.83¢	
	14.16¢	

1106 F. Compensation for Use of Cars is Figured as follows:

Estimating the value of a car in merchandise service *are* $750.00; car repairs at .324¢ per mile, and that all cars average about 30 miles per day, we get the following representing the value of one car per day:

5% interest per annum on value	$37.50
6% depreciation as per M. C. B. Rule	45.00
Use of plant (including shop buildings, machinery, tools, side tracks—including detached repair tracks—and stock of material, estimated at $2,000,000 at 5% per annum apportioned to 38,500 cars	2.60
	$85.10

Which equals per car per day	23.31¢
Repairs 30 miles at .324¢	9.72¢
Making a total interest, depreciation and repair charge per day of	33.03¢
An average of 30 miles per day would yield a rate per car mile of	1.101¢

G. Terminal Service.

The cost per ton for terminal service including interest on the fair valuation of the property, is based on results at the St. Paul freight house and yard, which are used by the Northern Pacific, Minn. & St. Louis and Soo Line, and on which we have a record of the rentals paid for the use of the property. The average cost per ton is found to be approximately 78.76¢ and assuming that this class of service could not be performed at stations along
1107 the line for less than it costs at St. Paul, where the volume of business is heavy, the cost for merchandise within the State would be approximately 8¢ per Cwt. for what is commonly called "station service." This is made up as follows:

Warehouse Freight.

	Per Ton.
Cost of Handling, including use of property	55.16¢
Cost of Office work, billing, etc	4.82
Cost of switching	18.78
Total Approximate Cost	78.76¢

Car Load Freight.

	Per Car.
Cost of switching, including use of property	71.41¢
Cost of office work, billing, etc	4.74
Total approximate cost	76.15¢
On the basis of doubling handling the approximate cost per cwt. would be	8 cts.

Relative cost of 100 Cars, Through and Local Freight. Example No. 1.

Applying the foregoing data to 100 cars of each class of freight, the following comparison is reached:

100 Cars of Through Freight.

	Tons.
Weight of cars—16 tons	1,600
35% for empties	560
Contents of 18.8 tons	1,880
Gross Weight	4,040

Train Movement Cost.

1108 4,040 tons 334 miles produces 1, 349,360 Gross Ton Miles at $05052 per 1000 miles	$681.70

Use of Engine.

Average gross train load of through freight is 1,187.6 divided into 1,349,360 produces 1,135 Engine miles.

1,135 Engine Miles at 14.16 cents	160.72

Use of Cars.

Use of cars, including 35% for empty movement, 45,090 at 1.101¢	496.45

Terminal Service.

Switching 3 times—405 cars at 71.41¢	289.21
Office work—100 shipments x 2—200 at 4.734¢	9.47
Total cost	1,637.55

Contents 1,880 tons x 334 miles produces 627,920 ton miles, making comparative cost per ton one mile for handling and moving	.2608 cts.

100 Cars of Local Freight.

	Tons.
Weight of cars—16 tons	1,600
35% for empties	560
Contents at 9.75 tons	975
Gross Weight	3,135

Train Movement Cost.

3,135 tons 110 miles produces 344,850 Gross Ton Miles at 82.81¢ per 1000 miles	285.57

Use of Engine.

344,850 Gross Ton Miles divided by average train load of 801.2 tons produces:

430 engine miles at 13.05¢	$56.11	
Add 40% for extra time on road	22.44	
		78.55

Use of Cars.

	100 cars 110 miles	11,000		
1109	35% for empties	3,850		
		14,850	at 1.101¢	163.50
				65.40
				228.90

Terminal Service.

Switching 135 cars x 2—270 at 71.41¢	192.81
Warehouse handling 975 tons x 2—1,950 at 55.16¢	1,075.62
Office work—1950 tons at 4.82¢	93.99
Total Cost	$1,955.44

Contents 975 tons x 110 miles produces 107,250 ton miles, making comparative cost per ton per mile	1.8233¢
Through business cost	0.2608¢
Percentage of cost of local business to through business	699.1%

Business Covered by Proposed Tariffs. Example No. 2.

The business out of St. Paul under the tariffs at issue for April and October 1905 combined was:

Less than carload freight	7,383,092	lbs.
The average carload for this class of business as per cast made in March, 1906, was	5,350	"
This business therefore required about	1,380	cars
Carload business was	3,873,161	lbs.
Loaded into	133	cars
An average load per car of	29,121	lbs.
Total weight was	5,628	tons
Number of cars used, computed as above	1,513	
Average load per car	7,440	lbs.
Tons one mile	916,419	
Average haul	162.8	mls.

These figures would produce the following cost:

1,513 cars at 16 tons each	24,208	Tons
35% for empties	8,472	
Contents	5,628	
Gross Weight	38,308	

1110 Movement Cost.

38,308 tons 163 miles produces 5,244,204 Gross Ton miles at 82.81¢ per 1000 miles	$5,170.82

Use of Engine.

6,244,204 Gross Ton Miles divided by average train load of 801.2 tons produces:

7,784 Engine Miles at 13.05¢	$1,017.12	
Add 40% for extra time on road	406.84	
		1,423.96

Use of Cars.

1,513 cars 163 miles	246,619	
Add 35% for empties	86,317	
	332,936 at 1.101¢	3,665.63
Add 40% for extra time on road		1,466.25

Terminal Service.

Switching 1,513 cars twice—3,026 at 71.41¢	2,160.87
Warehouse expense L. C. L. freight handled twice 3,691.5 x 2—7,383 tons at 55.16¢	4,072.46
Office work—133 car loads x 2—266 at 4.74¢	12.61
Office work—Warehouse freight twice—7,383 tons at 4.82¢	355.86
Total Comparative Cost	$18,328.46

Comparative cost per mile (916,419 ton miles)	2.0000 cts.
Comparative cost of through business	0.2608 "
Percentage of cost of through business	766.9%

Less Than Carload Business (First 4 Classes) Out of St. Paul in April and October, 1905. Example No. 4.

	Tons.
1,380 cars at 16 tons (See Example #2)	22,080
35% for empties	7,728
Contents	3,692
Gross Weight	33,500

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Movement Cost.

33,500 tons 135.4 Miles produces 4,535,900 Gross Ton Miles, at 82.81¢ per 1000 Miles		$3,756.18

Use of Engine.

4,535,900 Gross Ton Miles divided by average train load of 801.2 produces:		
5,661 Engine Miles at 13.05¢	$738.76	
Add 40% for extra time on road	295.50	
		1,034.26

Use of Cars.

1,380 cars 135.4 miles	186,852	
Add 35% for empties	65,398	
	252,250 at 1.101¢	2,777.27
Add 40% for extra time on road		1,110.91

Terminal Service.

Switching 1,380 cars twice—2,760 at 71.41¢	1,970.92
Warehouse expense at each and 3,691.5 x 2—7,383 tons at 55.15¢	4,072.46
Office work—7,383 tons at 4.82¢	355.86
Total comparative cost	$15,077.86

Comparative cost per mile (499,824 Ton Miles)	3.0166 cts.
Comparative cost of through business	0.2608 "
Percentage of cost of through business	1156.7%

In conclusion, especial attention is called to the fact that these comparisons are based on Main Line operation, Branch Line operation having been excluded on account of mixed train service. The mileage of the Northern Pacific in Minnesota is:

Main line	572.68	or 59.3%
Branches	382.91	or 40.7%
	965.59	100%

The freight density, i. e. tons one mile per mile of road, on the branches is less than one tenth of that on the main line, and this, together with the higher cost of operation on the branches, has a serious effect on net results.

1112 The witness DANIEL WILLARD recalled, testified as follows:

Cross-examination.

By Gen. H. S. HADLEY:

Q. Have you any information, Mr. Willard, as to the amount of ton miles of freight hauled upon through freight trains in Missouri, in any certain period, as compared with the ton miles of freight hauled by local freight trains in the same period?

A. Not in the aggregate, no, sir.

Q. Have you any experience upon which you could give an approximate ratio?

A. You mean the average train load?

Q. No, sir, the average amount of traffic, expressed in ton miles?

A. No, sir, I have not.

Q. Do you think the through freight trains handle more than 50% of the ton miles hauled?

A. Yes, sir.

Q. Would it be as high as 75%, in your opinion?

A. It would be in the nature of a guess, but I have no hesitancy in saying that it would be more than 50% and upwards; I don't know if it goes as high as that or not.

Q. Do you reckon with the question that Mr. Gray suggested in his answer, that local trains also do passenger business?

A. I did not hear his testimony.

1113 Q. Do local freight trains in Missouri carry passengers?

A. Yes, I think they carry passengers. But we don't look upon that as a direct source of revenue, and would rather be free of it.

Q. It is an added expense?

A. About 50 or 60 per cent of personal injuries happens to passengers carried on freight trains, and we look upon it as a detriment instead of a benefit.

Q. And it increases the expense of the operation of that class of trains?

A. I don't know to what extent it increases the expense of operations of the trains but the losses make the passenger business unprofitable on those trains. I don't know that it is any further reaching than that.

At this point the examination of Mr. H. A. GRAY is continued as follows:

Cross-examination.

By Mr. H. S. HADLEY:

Q. Mr. Gray, I have not clearly in mind yet an understanding as to whether you have given us the cost as you have estimated it from the information which you have, of hauling a ton of freight one mile upon a through freight train as compared with the expense of

handling and moving a ton of freight a mile upon a local freight train: is that what you gave?

1114 A. Yes, sir, that is what I gave.

Q. Do you know how much of that freight hauled upon your through freight trains of the Northern Pacific road, was freight which originated and ended in the state of Minnesota?

A. I do not.

Q. There was, wasn't there, freight hauled on the through freight in the state of Minnesota which began and ended solely in the State?

A. Probably there was.

Q. Do you know what percentage of the ton miles hauled by local freight trains was freight that originated in the State of Minnesota, and was destined to points outside; or originated outside of Minnesota, destined to a point within the State?

A. I do not.

Q. There was such freight hauled, wasn't there?

A. It would, I judge, be a very small amount.

Q. You heard the testimony of Mr. Willard this morning, did you?

A. Yes.

Q. The State of Minnesota is not markedly different in its general shape from the State of Missouri?

A. I would remark as to that fact, that my testimony was all based on main line business, which made it a much simpler proposition than Mr. Willard's.

Q. I catch the point now. You did not reckon with any business done on what you call your branch lines?

1115 A. None whatever.

Q. Does the Northern Pacific—I am not familiar with railroad conditions in your State—run across the state east and west?

A. It runs up first in a northwestern direction and then runs northwest to the State of Dakota line.

Q. The main line carries traffic from the Atlantic to the Pacific, in a general way?

A. Yes, in a general way.

Q. The movement of freight upon your main line is east and west, rather than north and south?

A. Yes.

Q. And you operate upon that main line what you call local and through freight trains?

A. Yes.

Q. And you operate upon your branch lines just local freight trains: is that correct?

A. That is right.

Q. What do you consider a distinct characteristic between what you call a local freight train and a through freight train?

A. The schedules prepared by the superintendents.

Q. What is it that makes one a through freight train, or what is it that is done by a through freight train that a local freight train does not do?

A. Through freight trains made up at St. Paul run through to the coast, Tacoma, Seattle, etc.

1116 Q. You mean it carries the same number through to Seattle, as a passenger train would do?

A. Yes.

Q. What are the lengths of your freight divisions?

A. I never heard the expression used, exactly, before I came here.

Judge SPENCER:

Q. Operating division, isn't it?

A. The business which I testified passed over the main line of two operating divisions, the St. Paul division and the Minnesota division.

Mr. HADLEY:

Q. Those are approximately what distances?

A. The St. Paul division is approximately 140 miles and the other would be 110 miles more. The business from one channel to the other was about 250 miles.

Q. That is going from east to west?

A. Yes, or from the west to the east.

Q. Would a through freight train starting from St. Paul stop to take on or let off freight before the end of that 140 mile operating division?

A. It might do so, but of course that is a matter which, while I may have some general knowledge of it, would come more under the purview of the operating officer or accountant.

Q. Your idea is that it would not have to stop——

A. Any more than it could help.

Q. And the same would be true of the next division?

1117 A. Yes.

Q. Is there a town of any considerable size at the end of the first division?

A. Not very much of a town, but there is an important point called Staples, where business comes in from our Superior Division, and trains are rearranged, more or less, there, so as to take in carloads freight going west that comes in over the Superior Division from Ashland and Duluth.

Q. Does your statement and calculation of expense take in the expenses of the St. Paul and Duluth line?

A. No, sir.

Q. Where you have freight coming in at the end of your first division on the north, the train is arranged to take that freight on?

A. Yes, sir.

Q. If a merchant to the west end of that first division would purchase a car or two or merchandise in the city of St. Paul, how would that in the ordinary and usual course of operation be carried?

A. I don't feel competent to answer that.

Q. The point I was getting at is, do you have sufficient information to make a statement satisfactory to yourself, upon this proposition; that the effort in the conduct of freight business is to carry freight as rapidly as possible from one point to another?

A. That is well understood, to get the largest carloads and
1118 the largest train loads and carry it as expeditiously as possible.

Q. It would be your opinion, as a railroad man, wouldn't it, that if there was a carload or two carloads of merchandise purchased at St. Paul, bound to a point between the end of the first and the end of the second division, it would be carried on the through freight train to the end of the first division, and then distributed by the local train?

A. That would depend on local conditions connected with the making up of the trains.

Q. You heard the testimony of Mr. Willard as to conditions that existed in the State of Missouri?

A. I thought he covered the ground very completely.

Q. And that was a very fair statement of the general railroad condition?

A. I thought the same conditions would apply.

Q. That is, the local freight trains would perform services ancillary to the through freight trains, both in picking up and delivering through freight, or freight carried on through freight trains?

A. Yes, sir. We do not start out in a rigid way and say certain trains shall be local, without regard to through freight, or vice-versa. We operate the road as a whole, to the best interest of the whole.

Q. The purport and significance of my question would all
1119 come down to this: that local and through freight trains are terms for designating trains; freight carried on local freight trains is not entirely freight beginning and ending in the State; and freight carried on through freight trains is not entirely interstate freight?

A. As a general proposition, that is so.

Q. So your testimony would not furnish a basis for calculating the percentage of State freight that was carried upon through freight trains, or the percentage of interstate freight that was handled by local freight trains?

A. No, sir, my investigations did not cover that.

Q. It would be true, wouldn't it, Mr. Gray, that if the relation between State and interstate freight was say as one to nine—that is there being one thousand ton miles hauled in a certain period by both local and through freight trains, and one-ninth of that was freight beginning and ending in the State, and eight-ninths was freight which began outside the State and ended in the State, or other characteristics of interstate freight; and that one-ninth of the tons mile hauled by through freight trains was State freight, then there would be no increased cost in the doing of the State traffic by reason of the increased cost in operating local freight trains?

A. That is a good deal of an arithmetical puzzle. I would want to spend a lot of time over that before I could answer it to
1120 my own satisfaction, much less yours.

Q. I don't care to delay the hearing to do that.

You have used in your calculation as to the ultimate expense, what is known as the "ton mile," have you?

A. Yes, sir.

Q. And you think it is the best and proper basis?

A. I think the only basis.

Q. If you had the earnings upon what would be called "State freight", and the earnings upon what would be called "interstate freight"—I don't mean to use those terms synonymously with local and through freight—and had the expense of the doing of the State business, could you apportion the expense of doing the State business by getting that percentage of the entire State expenses that the earnings upon freight bore to the entire earnings?

A. I could not.

Q. You would have to reckon with the question of the revenue upon the two classes of freight per ton per mile?

A. Per ton, and from day to day.

Q. And if the revenue per ton per mile which in that classification was known as State freight, was two or three times greater than the revenue per ton per mile upon the interstate freight, that must necessarily enter into the calculation of the apportionment of the expenses?

A. May I ask you to repeat that?

(Previous question read.)

A. It would have nothing whatever to do with the apportionment of the expenses.

1121 Q. That is, if you were undertaking to divide expenses on the relation of revenue to all that classification?

A. I wouldn't undertake it.

Q. You think it would be a fallacious system?

A. Yes, sir.

Q. There is no necessary relation between the earnings upon one class of freight and the earnings upon another class of freight, and the expenses of conducting the two classes of freight?

A. None whatever.

Q. You might as well take the percentage of men and women to expenses, so far as getting a correct result is concerned?

A. That is right.

Q. What per cent of the total ton miles done by your road in Minnesota was less than carload lots?

A. I haven't got those figures with me. I don't know that I have them at all. I haven't them with me.

Q. Was it a comparatively small per cent?

A. Yes, sir. The Northern Pacific does a very large carload business.

Q. And a small less than carload business?

Does the density of population constitute an important factor in the traffic of a road?

A. In determining the average rate charged?

1122 Q. Yes, and determining the character of the freight handled, as being what you call through freight, and being local freight?

A. It does.

Q. In a sparsely settled country the hauls are longer?

A. Take it this way: for instance, in a sparsely settled country, made up of mostly a farming population, owning large farms, the great bulk of the freight would be wheat. In thickly settled communities there is very little wheat or farm products, but a large merchandise business.

Q. On the business of the Northern Pacific, there is a considerable portion of the tonnage that would consist of solid trains running to the Pacific Coast or coming from the Pacific Coast to St. Paul and Minnesota?

A. It is more east bound.

Q. Do you know whether the density of population bears a close relation to the density of traffic?

A. I never made any figures on it.

Q. Do you know the density of population in Minnesota?

A. I haven't got those figures either in my head or on paper. You can probably get them.

Q. I have it 221 persons to the square mile. Does that correspond with your idea?

A. I should not wonder if that is about right. There are published statistics from which that could be had.

1123 Q. It should be per mile of road, instead of square mile?

A. I think you can get it both ways.

Q. If the percentage of population per mile of road in Missouri was more than double the percentage of population per mile of road in Minnesota, that would change very markedly, wouldn't it, the nature of the traffic, and the earnings and expenses of handling it?

A. That would depend upon the occupation of the people, and their natural resources; whether it was a farming population or a manufacturing population.

Q. Take it, if it were a densely settled farming population, the amount of shipping to supply those people would naturally increase?

A. I think I would want to know other local conditions beside the mere figures of the ratio, in order to answer that question.

Q. In question of building a new road to take care of new territory, isn't it a matter that the railroad man always has to reckon with, the density of population in that territory, whether it will supply traffic which will make the road a profitable investment?

A. A railroad man will reckon two things: first, what he is going to take out; and then what he is going to take in.

1124 Q. And what he takes in and out of a certain territory depends upon the people there to consume and produce it?

A. But you see there is an immense difference between the two plans of business; what a man takes out may be sugar or corn or lumber or other products of the soil, forest or mine. What he takes in may be mostly merchandise or feed or *clothe them.*

Q. The general proposition I have stated, would you figure, that the number of people who produce and the number who consume, determine what is taken out or brought in?

A. It is a self evident proposition, whether I understand you or not, you can estimate upon it.

Q. I don't mean to argue.

A. I don't mean with me, but before you get through with this.

Q. What are regarded as the best paying roads in the country: those that have the largest or the smallest local business?

A. You must take the two things together. Now, for instance, two of the best paying roads in the country are the Northern Pacific and the Great Northern. The Great Northern does an enormous wheat business. The Northern Pacific does not do so much, but it has two territories from which to draw its wheat traffic; one going east and one going west. But the Northern Pacific does an enormous lumber and shingle business, forest product business, in States
1125 of Oregon and Washington; and year after year that country is growing up so that the local business has increased.

The MASTER:

Q. Have you any data from which you could approximate the relation between the interstate and State freight traffic of your road, taken as a whole road?

A. I cannot say that we have any figures made on that. I remember in the North Dakota Rate Case eight years ago, we made up for the purposes of that investigation, special figures showing the interstate and State business separately; and in making up the interstate business we showed what Mr. Willard referred to today; the business that went into the State at one side and went out at the other, without stopping enroute. But I do not think in our general statistics there are statistics of that kind; we make them when they are called for.

General HADLEY:

Q. You could get them?

A. I would probably have to spend some money to get them. I had to spend a good deal of money in getting these figures (indicating exhibit). Of course, I didn't give you all of it—but the evidence I gave before the Minnesota Commission, I had to spend some thousands of dollars to get that information. I tried to avoid useless things as much as possible.

Q. And to give actual facts?

A. Yes.

Q. It would require time and expense to prepare the data,
1126 such as His Honor asked you if you could get?

A. Yes, but of course it could be done.

General HADLEY:

Q. What is the expense of operating, expense to revenue on the Northern Pacific and Great Northern?

A. It varies from 50 to 52 or 53 per cent, according to the variation of taxes.

Q. The percentage of expenses to earnings appears from the report of the Burlington Company here, to be about the same?

A. It is much more on the Burlington.

Q. Excluding the taxes?

A. Much heavier.

Q. Do you know what it is on the Burlington?

A. Oh, it is up in the sixties, at least ten per cent more.

Q. You spoke of the use of terminals in the City of St. Paul and said they were used by three roads?

A. Yes.

Q. You mean that the terminals of the Northern Pacific Company are used by three roads?

A. Yes.

Q. You apportion the terminal expenses of freight carried upon through freight trains as compared with the expense of freight carried upon local freight trains: did you apportion in that way all the terminal expenses which you did not specially exclude?

1127 A. You see what I did was this: I put the Burlington expenses in a pot and boiled them down to produce three things: I produced a switching rate, a warehouse rate and an office rate.

Q. Now, did you, in apportioning those expenses as against——

A. Pardon me. Now, you see, in that way I get a switching rate per car; I get a warehouse rate per car, and I get an office rate per car. So it is not a question of apportioning to one or to the other. It is simply that when you come to figure on the respective things, you have so many cars to switch and you apply the switching rate to that. If certain freight has gone through the warehouse you apply the warehouse rate to that. All of it had to be handled in the office, so you apply the office rate to that. It is not a question of applying so much of your station expense to through freight and so much to local.

The thing I established is so much terminal cost per car or per ton, as the case may be, and apply that to the specific case.

Q. But in estimating this terminal cost per car or per ton as the case might be, do those three different classes of expenses, you had to start with something to apportion?

A. Surely, yes.

Q. Now, did you include the cars handled at your terminals for other roads, in that calculation?

1128 A. Yes, certainly; and the tons handled at the stations by other roads.

Q. And also the revenue you receive from the other roads?

A. The question of revenue must be thrown out of doors altogether.

Q. What is the usual charge one road makes to another for handling its cars through its terminals?

A. In this case you see these other roads paid us rental. For instance, the Minneapolis & St. Louis road paid us a rental of $10,000 a year. It was a very low rate made away back in the dark ages of 1894 or 1895, during the days of the receivership, when property was worth much less than it is now. In that way I felt very safe in using the same rental to apply to the rent business, and then put in the actual expenses.

You ask me what the average rate is, and I am not able to say.

Q. You allowed 40¢ per ton for one terminal handling?

A. Forty cents?

Q. I so understood. You allowed 80% for two terminals?

A. Seventy-eight and a fraction per ton for one handling. What I said was 4 cents per hundred for one handling, which would be $1.60 a ton.

Q. Then instead of 80¢ a ton for two terminals, it would
1129 be 80¢ for one terminal?

A. Or a little less.

Q. $1.60 for two terminals?

A. Yes.

Q. I misunderstood you.

A. I expressed it that way for this reason: there has been a great deal of talk about the expense of terminals in large cities, as if the terminal expense would be less at the smaller stations with the smaller terminal. According to all rules of wholesale and retail business, it should be the other way. I remember the time when I thought just that way, but while I have not gone into it exhaustively, I am satisfied that the terminal expense on a ton of freight, going through the warehouse, 4¢, the expense is fully as great as it is at large stations like St. Paul, per ton. You want to keep that in mind. Not per lot of business, or per train, but per ton of merchandise freight that is handled through the warehouse at local stations.

Q. You spoke of the question of the maintenance of expensive terminals, the expensive land in large cities, as being a subject of controversy as to the apportionment as to the expenses of different classes of freight?

A. Did I speak of that?

Q. I so understood you. Did you refer to the Sanderson
1130 case in Minnesota?

A. I did not refer to it at all.

Q. Did you have that in mind when you said there had been much controversy over that question?

A. Oh, no. What I said was what I have heard here during these two days.

Q. How do you apply the terminal expenses of a shipment of freight for a certain distance, in estimating the cost of handling of that freight per ton per mile?

A. The distance cuts no figure with me as to that. I take certain business, take a hypothetical case of 100 cars of a certain kind of business, and beside that took actual business done out of St. Paul. It is not a question of distance, except you take the average of the haul. It is a question of averages, as you remarked yourself this afternoon. It is not a question of concrete cases, but a question of averages.

Q. I have not made myself understood, apparently. If you have a shipment of 100 miles and two terminal expenses which amount to $1.60 a ton for the two, according to your estimate, and you got for hauling that shipment 100 miles 30¢ a ton—I don't think it is fair to put a concrete proposition of that kind. This business has got to be done in a broad way, of averages of business handled. When you try to pin it down to a carload or a ton or a load, it

might be unfair to the State or it might be unfair to the
1131 railroad company, but in either case I don't think it ought to be done.

Q. Do you apportion the terminal expenses along the mileage of the entire shipment, in considering the expenses of shipment, and do you follow the same plan in determining the average expense per ton per mile?

A. You see what I figured was that there was a certain tonnage shipped over the road; some perhaps 10 miles and some perhaps 250 miles. I didn't undertake to follow the business that went 10 miles or the business that went 250 miles, but I took the general mileage of all the business.

Q. I understand that.

A. And I took the cost per ton that was applicable to each ton, and in that way found the expense per ton per mile could be ascertained if desired. I did not figure the terminal expense per ton per mile.

Q. But you added the terminal expense as a part of the expense of handling?

A. As a part of those four things—terminal expense, moving cost, engine cost, fire cost. Those four things, as I made them up, constitute the cost of handling and moving the business.

Q. You gave your figures as to what you found was the average distance of through freight and of freight hauled on local trains?

A. I am sorry to say I did not. I gave the average for the whole road, but not for Minnesota.

1132 Q. Then I misunderstood you.

A. I gave the average for Minnesota, to apply to the local business on ten miles. The through business I used 344 miles, which I am very sure is too low, and operated against us.

Q. You used 344 on what you would call through business?

A. On through trains running out of St. Paul on Minnesota schedules.

Q. You spoke about allowing three terminal expenses——

A. No, sir, three switching expenses.

Q. In allowing those three expenses or apportioning the switching expenses as between the ton per mile hauled on the local freight trains, as compared with the ton per mile hauled on the through freight trains, did the shorter distance of the haul upon the local freight trains make any difference in the apportionment of the switching charges?

A. I am not sure whether I understand you. But I will put it this way: on the way freight I figured there were only two switchings, but on the through business, which I assumed was carried an average of 343 miles, which would take it away beyond Minnesota, I figured that there were three switchings; a switch starting, a switch intermediate, and a switch at destination.

1133 Q. Did you apportion that expense in the one case in reference to the length of the haul and in the other case without any reference to the length of the haul? You must have done it to determine the number of ton miles?

A. I figured out that the cost of handling and moving certain business, say 100 cars of through freight, was $1700—or whatever it was—some amount, which I think you took down at the time. I made up the total cost and then divide- into that number of ton miles. I did not aggregate any items and determine the rate per ton per mile.

Q. If I can make myself understood, I think there is no misunderstanding between us: take a shipment 334 miles on the through freight train.

A. Yes.

Q. And allowing three switching charges for that.

A. Yes.

Q. You would determine the ton mile haul upon any particular train load or car load, by multiplying the number of tons in the train or car, by the number of miles?

A. There is no question. It might be exceedingly unfair to apply that to any particular train load. You must take it on the average.

1134 Q. In estimating the expense of a train going a certain distance, or estimating the expense of a carload going a certain distance, you arrive at the number of ton miles in the haul by the multiplication of the number of tons in the car by the number of miles?

A. I wouldn't do it that way. If I wanted to know the cost of moving a certain train, I would go and get the items of expense. I would find out the wages paid the train men and what fuel was used, and so on.

Q. I am not asking you about expenses, but how you determine ton miles.

A. The number of tons carried multiplied by the number of miles.

Q. That is what I asked you. You have say 10,000 tons of freight hauled 300 miles. You have 300 multiplied by 10,000, which makes 10 ton miles?

A. Yes.

Q. If you have three switching charges for that 10 ton miles handled, the switching charge would enter into each ton mile?

A. Certainly.

Q. If you were called upon to apportion the expense of that shipment to the State of Minnesota, according as that part of the shipment hauled lay in the State of Minnesota, you would simply apportion that portion of the switching charge which the mileage in Minnesota bore to the entire mileage, wouldn't you?

1135 A. If I were called upon to do it that way I would; but I wouldn't do it that way.

Q. What would you do?

A. If anyone in authority said I must do it that way I would, of course, do it that way. But in dividing expenses between Minnesota and some other State, there may be conditions such as Mr. Willard referred to this morning, which would need to be taken into account.

Q. To put a concrete example, and see if I have been dense in this matter, or unfortunate in expressing myself——

A. I understand you.

Q. You understand, I think, but others have not favored me that way. If a shipment 50 miles in length has two terminal expenses which are estimated at $2.50 at each end of the line, and another shipment wholly in the State of Missouri has two terminal expenses which are the same; then in apportioning, if you had to apportion, as you have indicated, the expense of handling what we call interstate shipments, to Missouri, you would apportion that percentage of the terminal charges in and out of the State according to the mileage in Missouri, wouldn't you?

A. The way I would go about it, I would determine the cost of the whole shipment.

Q. Including the terminal charges?

1136 A. Yes. And then divide it on the basis of ton miles.

Q. Say there was 1000 tons hauled in a car 50 miles, that would make 5000 ton miles?

A. Yes.

Q. And if $5.00 terminal expense——

A. There you go again. I would have taken care of all that before.

Q. You wouldn't take it item by item?

A. You select the terminal expense; I say take the whole expenses.

Q. I haven't finished. You would take $5.00 on the terminal expenses and $25.00 for trainmen, and all other items that went into the cost of handling that shipment, and you would apportion half those expenses to Iowa and half to Missouri, if the shipment was divided equally between the two?

A. What I would do, and it seems to me the simple and obvious thing, I would determine what was the expense per ton per mile on the whole business; ascertain the number of tons hauled one mile in Missouri, and the number of tons hauled one mile in Iowa, and unless there were some special local expenses, I would divide the two between the two states on that basis.

Q. Then there would be no difference in the terminal expenses per ton per mile upon the interstate shipment than upon the

1137 State shipment, topographical conditions being assumed to be the same.

A. Not per——

The MASTER:

Q. Do I understand you, that in these special computations which you have here submitted this afternoon, you had allowed for three terminal charges, on your through freight trains, and for two terminal charges on your local freight trains?

A. For the third time I want to explain, if you will permit me——

Q. I want that you should.

A. I want you to know that is a switching charge, which is only a part of the terminal charge. For instance, really a shipment can have only two terminals. They use the term "terminal" as if any

given point can be a terminal. So far as a shipment is concerned it can have only a beginning and an ending. So far as the terminal expense is concerned, which takes in the agents, station supplies, and all that sort of thing, there are two terminal charges on any shipment, on any ton of freight, or any unit you take. But, as a matter of fact, in hauling through business over our road, there are some intermediate points at which we have to make a switch, to straighten out the trains; and in order to be fair to the State I charged the through business with that additional switch, but not any other terminal expenses.

Q. Just the switching charge?

A. Yes, sir, just the switching charge.

1138 General HADLEY:

Q. You gave a figure on earnings per ton per mile on freight handled on the local freight trains, as compared with freight handled on the through freight trains?

A. On less than carload lots.

Q. Didn't you also on carload lots?

A. I gave only one rate per ton per mile.

Q. I thought you gave the figures .2608.

A. That is the cost for handling and moving all through business.

Q. Haven't you the earnings upon the two classes of freight upon which you gave the cost?

A. I gave you on less than carload business and said it showed under 4½¢ per mile.

Q. But you did not give the earnings per ton per mile handled and moved on the local freight trains, which you gave as 1.82¢ per ton?

A. The only figures I have as to that are these: that on the total business shipped from St. Paul in April and October to Minnesota points, under the first ten classes, the average rate per ton on the mile, for all business was 3¼¢.

Q. Was that on through or local freight trains?

A. That was on local trains.

Q. Per ton per mile?

A. Yes, 3.25. On less than carload lots included on that the rate went up to a little less than 4½¢.

1139 Q. Have you the figures upon the earnings on the freight shipped on through freight trains?

A. I have not, but for that year the average of our total business on the whole road was 8.3 miles per ton per mile.

Q. Those are all the figures you have?

A. Yes, on rates.

Q. Do you include in the classification you gave, the proportions allowed Minnesota out of interstate rate, in arriving at your figures? You did not make it between Minnesota and other states?

A. No, sir, I did not take rates at all. The question of revenue did not enter into my calculations.

Q. It moved on proportionate rates, didn't it?

A. The business?

Q. Yes. If it came from beyond Minnesota?
A. That is a traffic question, and I don't know about that.
Q. You cannot give any information upon that?
A. No, sir, I am not prepared to do so.
Q. I believe you stated that your figures as to the ton one mile were prepared from the months of April and October, which you thought were typical of general conditions?
A. I though them fair, average months.
Q. But you have no regular record from which you took them?
1140 A. We did not have the figures made up as part of our statistics. We were called upon rather suddenly and upon short notice, to furnish information which could be used in the case, and we did the best we could during the time at our disposal.

General HADLEY: I have asked Mr. Gray all the general questions I desire to ask him, and I am trying to get out of town tonight and leave this in better hands; but we would like, if Mr. Gray can stay over to attend the Railroad Men's Convention, to ask him some questions tomorrow.

We would like to examine those figures he has given, in connection with our experts, which would develop a proposition that may be helpful in the case.

The MASTER: I think it is fair for counsel to be permitted to cross-examine a witness upon any paper which has been used in the case. If it is important you should leave town tonight, we could perhaps adjourn now and have a short session after dinner.

Mr. GRAY: I think it is fair play they should have an opportunity to examine those figures, and I will stay over.

Thereupon the further hearing of the testimony herein was adjourned until Thursday, October 25, 1906, at 10 o'clock A. M.

1141 CHICAGO, ILL., *October* 25, 1906.

Met pursuant to adjournment as above on Thursday, October 25, 1906, in the general offices of the Burlington Railroad Company, 209 Adams Street, in the city of Chicago, Illinois, at 10 o'clock, A. M.

Present: Mr. Frank Hagerman appeared in behalf of the Burlington Railway Company. Mr. John Kennish and Mr. Rush C. Lake appeared in behalf of the State of Missouri.

The following proceedings were had:

The cross examination of Mr. Henry A. Gray, continued as follows, by Mr. Kennish.

Q. In your testimony yesterday, Mr. Gray, you referred to and read some typewritten testimony given before the Warehouse and Railroad Commissioners of Minnesota?
A. Yes.
Q. That was not your testimony given before the Commissioners in the hearing, was it?
A. It was, in substance. That is, I read it in much the same way.

I did that for my own guidance, and I answered the questions much in the same way I did here.

Q. You admitted that as a paper to be filed in the case?

A. I did furnish a copy of it to the statistician of the commission, but not as an exhibit in the case.

1142 Q. You were examined and cross examined as a witness in the case in addition to that?

A. Yes, sir.

Q. When was that hearing had?

A. In the latter end of March.

Q. Of this year?

A. Yes, sir, this year.

Q. What was the purpose of that hearing?

A. It was to determine the reasonableness of a reduction in rates on what are known as the 10 classes ordered by the Commission.

Q. Local freight rates?

A. Of course, it would be through in a way, too. It was the business covered by the 10 classes, 1, 2, 3, 4 and 5 and A, B, C, D, and E. The Railroad and Waarehouse Commission prepared a tariff or schedule of rates and submitted them to the railroad companies and gave them an opportunity to submit testimony as to whether the rates should be put in force or not.

Q. But your evidence in that case, and the figures you submitted, were for the purpose of showing the extra cost of doing local freight business as compared with through freight business, wasn't it?

A. Yes, sir.

Q. Then wasn't it the local freight business that was affected largely by the proposed reduction in rates?

1143 A. Of course, any rates that are made by the State Commission apply only to the State, so far as they are concerned. As a matter of fact, this reduction of rates necessarily affected the rates running into North Wisconsin, as far as Jamestown.

Q. But I asked you, wasn't it local freight, as we have been using the term in this case, that was mainly affected by this proposed reduction, and wasn't that the reason you were making your estimate as to the extra cost of handling local freight as compared with through freight?

A. No, sir. The point is this: The class of business on which they undertook to prepare a new schedule of rates, is business that is mainly carried in local trains, and in my judgment the best way of showing whether the rates are reasonable or not is by showing, in a general way, and it can be done only in a general way. You cannot take a specific shipment or a specific class of goods. It can be done only in a general way. But if you can show that it costs for the business carried in local trains several times as much as it costs to carry the business that is done in the average way on through trains, it demonstrates the reasonableness of very much more times per ton per mile for the business done in local trains.

Q. Your computation was done more to show extra cost of oper-

ating local trains than through freight, than the character of freight that might be carried on either?

1144 A. When you say "cost of operating trains" that brings it down to a question of the train itself. My object was to show that the cost of carrying freight per unit in local trains was considerably higher than the cost of carrying freight per unit in through trains?

Q. That is what I asked you, Mr. Gray.

A. You are not, perhaps, as precise in that as I am, for the reason that I have been stewing over this thing for years, and have given it a great deal of time, and I find it necessary to be precise. I ask you to excuse me when I am a little precise.

Q. So the freight that was carried on what you term "local trains" would consist of all classes of freight, probably interstate, less than carload lots, and probably interstate in carload lots, and intra-state freight in both kinds of claim.

A. These local trains were trains within the State of Minnesota. We were fortunately able to do that, because, as I explained last night, it was all main line business. If we included the branches it would largely increase the cost. We took main line business, and that covered two operating divisions in Minnesota, from St. Paul to Staples in a northwesterly direction, and from Staples in a northerly direction, to the State line.

Q. I want to ask you whether or not the local trains you speak of would not carry both kinds of freight, less than carload lots

1145 and in carload lots, interstate freight; and the same kinds of freight, of intra-state freight, to a certain extent?

A. These trains I speak of, would originate at St. Paul. They would be made up in the first instance so that unless they carried freight which was received from another road and would not be counted in this instance interstate freight, it would not be in its origin interstate business, purely local in its origin.

Q. If a carload shipment had been shipped from Chicago to a station ten or twenty miles beyond St. Paul, would that be carried in the kind of a train that you refer to as "local;" that would be an interstate shipment?

A. That would be an interstate shipment. I think that word "intra" ought to be tabooed. If you have state and interstate, that is all the classification you need.

Q. In that case I have mentioned, would that car be carried on the local train you have mentioned?

A. I am not enough of an operating man to say.

Q. You wouldn't know in that case?

A. No, sir.

Q. If goods in less than carload lots were shipped from Chicago, say from the department stores, to stations along west from St. Paul, but not far from there, along your road, those would be interstate shipments?

A. It would be so far as we are concerned.

Q. It would be in fact an interstate shipment, wouldn't it?

1146 A. For instance, the State would not allow us to claim it was interstate business, so as to exempt it from the operation of these laws.

Q. But aside from the question——

A. That is the vital question.

Q. —of whether it is State or interstate business, would it be carried on local or what you term "through trains"?

A. In small lots?

Q. Yes.

A. Local trains would carry through to local stations on the line.

Q. Coming back to the question I asked you a few minutes ago, isn't it a fact that what we term interstate freight, both in carload lots and less than carload lots, and State freight in carload and less than carload lots would be carried on what you term the local trains, in the cases I have mentioned?

A. You see you are assuming that business that would come in from the east and be rehandled at St. Paul, is interstate freight; I claim it is not.

Q. You claim that is not interstate freight?

A. Yes.

Q. You claim that by changing it from one line to another, or from one car to another——

1147 A. Passing it through the warehouse and reloading it in other cars, it would become, so far as the Northern Pacific is concerned, local to the State; and the State authorities would require us to be governed accordingly.

Q. You call that intra-state, or State freight?

A. I call that State freight.

Q. You were not concerned in comparing the relative cost of interstate as compared with the State business, were you?

A. No, sir.

Q. You confined your investigation to the cost of conducting local freight as compared with through freight, both being State business?

A. I would answer that by saying that it is probable that on most local trains there is some interstate business. It is also possible, if not probable, that on most through trains there might be purely local State business. These things must be considered, not according to hard and fast lines, but as to the general character of the business, and on a system of averages. If that is not done it will never be possible, either for a State Commission or the Interstate Commerce Commission, or any other body, to determine as to the reasonableness of rates.

Q. You testified as a witness for the railroad company in that case, I believe?

A. Yes.

Q. And your facts and calculations that you submitted in that statement were gotten up with a view of showing that if these

1148 proposed rates were put in force the railroad company would receive no return on its investment?

A. I did not say that.

Q. Reasonable return—would you put it that way?

A. These were submitted by me to prove that if the rate inaugurated by the Commission were put in force, they would not be sufficient to pay the interest on the bonds, the taxes cost of maintenance, and a reasonable return to the stockholders.

Q. You think they would be, what we term confiscatory, in character?

A. My theory is, and I suppose in substance it is every one else's theory, that in practice it is often departed from, and that is that every dollar of revenue ought to contribute an equal portion, not only of the cost of doing the business but of the interest of the value of the property.

Q. Every dollar's worth of service rendered by the company?

A. As a matter of fact, that in practice is not carried out, but it is a safe and it is a correct theory, that every dollar——

Q. That is required in justice to the shipper and the patrons of the road, isn't it?

A. The thing is this——

Q. Isn't that a fact?

A. What?

Q. To charge such a rate as would give a return to the
1149 railroad company, would be required in justice to those who are shipping over the road, so you would not have to exact more than a reasonable rate from some shippers in order to make up the deficiency of rates from others?

A. Well, on that let us go a little further——

Q. What do you say to that proposition: I understood you to announce that as your theory.

A. I lay down as a theory that every dollar of revenue ought to lay down, in addition to earning the revenue, a quota on the taxes, interest on the bonds, and a reasonable dividend on the stocks.

Q. Wouldn't that proposition necessitate this: that every ton of freight carried by the railroad company ought to bring a return of something more than the operating expenses, or, as you put it yesterday, "cost of handling and moving"?

A. That it ought to contribute more?

Q. More than the mere cost of handling and moving?

A. It ought to?

Q. Yes.

Q. But is has been a well recognized fact, that a railroad company, in order to meet competition, is justified in taking a return in some cases from others. Further, if I may state it, there is a great deal of agitation now-a-days in regard to passenger rates. On the Northern Pacific, in all States, the maximum passenger rate is three cents a mile——

1150 Q. I don't know that we care to go into that.

A. It will take me only part of a minute to state it.

Q. It has nothing to do with what we are studying.

A. It is in line with what I stated on revenue. I can prove that a short haul, at three cents per mile, does not pay for the cost of

moving a passenger; but it is recognized as good public policy to have a uniform rate for carrying passengers.

Q. But that policy is not applied in the shipment of freight?

A. It is.

Q. Not in the same way.

Q. There is not a uniform rate per mile. But it is necessary, in order to meet competition, or it may be in order to assist some new industry, that is for the benefit of the State, and will greatly help the State, to make lower rates in some cases than in others. That is a well understood fact, and I believe it has been laid down by the Interstate Commerce Commission, in their decisions, that it is perfectly proper and legitimate, and good public policy.

Q. You state that it would be necessary to make rates lower than would be reasonable?

A. No, I didn't say that.

Q. Lower in some cases than others?

A. Yes. I claim it is reasonable to make the rates lower in some cases than in others..

1151 Q. In order to meet competition, was the first reason you gave. Now, Mr. Gray, isn't it a fact that there is much more competition in long hauls, and between central points of markets, than there is in the little stations and short hauls along the route, where you say they do make the reduced rates?

A. That would depend upon local conditions.

Q. I think you can answer that question yes or no.

A. I am going to answer it.

Q. Let me put it another way: the first reason you gave for making a lower rate in short hauls, a short distance of freight transportation, than for others, is the competition you have to meet?

A. Yes.

Q. Now, isn't it a fact that there is more competition on the long hauls, where there are the termini of different roads, than at small places, where there is no competition?

A. But——

Q. Is that a fact or not?

A. I want to say this: the competition extends a great deal further than many people suppose. For instance, there is competition, two roads run across a station at a certain point: now, the competition not only affects that station, but it affects the stations for several miles on either side of it.

1152 Q. Probably the shippers would haul freight by wagon otherwise?

A. Not only that, but under the facts of the long and short haul law, it is influenced. You make a rate to a certain point, and you cannot make a lower rate to a point beyond it, or a higher rate to a point a few miles this side of it.

Q. Suppose this road you are connected with extended across the State of Minnesota, as I suppose it does, and there are three points on the route in which other roads compete with it, and only three points; and that at all the other stations you have no competition.

A. As I have explained, the competition of these three points would affect the rates at every other point.

Q. Not very far though, not a great ways from those points?

A. It would depend upon various conditions.

Q. And you want to stand on that answer you gave, that one reason, the first reason for departing from what would be an average rate charge on freight, in cases of shorter distance, would be because of the competition in the shorter distance than on the longer shipments?

A. I don't see what the question of distance has to do with it. I am not a traffic man, to begin with. Of course, I have given a great deal of thought to this whole question, and have read a great deal about it. I simply lay it down as an abstract proposition to start with, that every dollar of earnings ought to contribute
1153 its like quota of return on the investment.

Q. That is what we were talking about when I asked you this question, and you said you could depart from that principle in cases of shorter distance——

A. I did not say shorter distance.

Q. That is what we were speaking of, in speaking of the per cent of freight and passenger rates in all distances: I asked you if that same principle applied to freight.

A. Freight and passenger traffic are entirely different. A passenger is charged a certain rate, regardless of distance. Just as the Post Office Department charges two cents for a letter from here to San Francisco, and charges the same for a letter to the other side of town.

Q. So that we may understand each other, we are speaking with reference to the charges made by the railroad companies on freight hauled a short distance than on freight hauled a longer distance, and in explaining why they would depart from the rule, that every dollar of revenue ought to pay something more than the cost of carrying it, and contribute to the other expenses of the company: wasn't that the thing you were speaking about?

A. I should have to go back to what immediately preceded my statement.

Q. Come to that point directly, Mr. Gray. I will ask you that question. It is contended by the railroad companies gen-
1154 erally, that the shorter haul of freight is less profitable than the longer haul, isn't it?

A. Yes, I think so, but not necessarily everywhere.

Q. That less than 50 mile shipments of freight, pay no profit above operating expenses?

A. I have never claimed that.

Q. You do not claim that?

A. No, sir.

Q. You do claim, though, that it pays less profit to the company than on shipments for a longer distance, do you?

A. I claim, but I claim only for my own company, that the great bulk of its revenue, its net earnings, accrue from the transportation of long haul business.

Q. What reason would you give for the companies charging a rate less profitable on the shorter haul than on the long haul?

A. That brings in the vexed question of rates.

Q. Does that bring in the two reasons that you gave a while ago, competition and helping new industries?

A. It does bring in competition.

Q. And helping new industries?

A. Yes, but not as to the general proposition of rates a short distance. Traffic managers who have spent their lives in the business have made the rates for the short distance. Now, the things that have governed and influenced them in making those rates,

1155 would better be explained by them than an accountant.

Q. You have not looked into that?

A. I would rather stultify myself if I said I had not looked into it, but that is not my province.

Q. How long did you say you had been in the railroad business?

A. I commenced about 33 years ago.

Q. That was before there was much railroad legislation in any of the States?

A. I began——

Q. Isn't that a fact?

A. In 1874 the Potter law was passed in Wisconsin, and that was the first serious attempt at railroad legislation; and I entered the railroad service in 1874.

Q. Was that the first railroad legislation?

A. I think that was the first that assumed national importance. The reason I say that is, that the Supreme Court of the United States gave a decision on what was known as the "Potter Law," which was the turning point, and if I may say so a prominent milestone in railroad legislation.

Q. That is what you called the "Granger Law"?

A. Yes, and in Wisconsin was called the "Potter Law."

Q. There was an agitation in regard to rates, and that agitation was called the "granger movement"?

A. Yes.

Q. I want you to state whether or not in your knowledge

1156 as a railroad man the rates as to distance were practically the same before those State laws were passed as they have been since the State laws were passed?

A. I don't know.

Q. You don't know that?

A. The rates have not been fixed by State laws until during the last three or four years.

Q. There have been maximum rates for some years. One was passed in our State in 1875, a year after the Potter law.

A. I would answer you if I knew.

Q. I want to know from your knowledge as a railroad man whether or not the rates as to distance were practically the same, when they were not affected or influenced by any legislation whatever, than they were when fixed by law, under the schedule?

A. I can answer you only in a general way, that so far as it has come under my observations, State commissions in seeking to fix

rates on local business have taken into consideration the question of distance, and probably more scientifically in the State of Minnesota than in either Iowa or Illinois.

Q. The reason they take into consideration the element of distance in fixing rates, is because of the increased cost per mile of haul on shorter distance than a longer distance, isn't it?

A. Yes.

1157 Q. And the purpose is to make the increased rate sufficiently higher to make it compensatory, taking into consideration the low cost of taking such a shipment?

A. Yes.

Q. That is the object in making that difference?

A. Yes.

The MASTER:

Q. In other words, that principle is recognized by both the railroad companies and the legislatures of the various States?

A. Yes.

Mr. KENNISH:

Q. And there has been practically no departure from that principle since the States have enacted legislation regulating the matter of freight rates, so far as you know?

A. I have never heard of any departure from that principle, only as I have said, it is carried out more scientifically in some cases than in others.

Q. You said that you were hurried somewhat in preparing your figures for the hearing before the Railroad Commissioners in your State: when did it propose putting in force those rates you spoke of?

A. I did not mean by that, that what I did do was not done thoroughly.

Q. I did not mean to suggest that, Mr. Gray. But you said you did not have the time to——

A. What I meant was, if I had had more time, instead of confining my investigations to two months, I might have taken six months, or a whole year, but I do not think the results would have

1158 been radically different.

Q. When did you first know it would be necessary to prepare tables or give testimony on that question, before the Commission?

A. I think it was some time in the month of February.

Q. Of this year?

A. Yes.

Q. And you say that after knowing you would be called upon as a witness, you selected two months in the preceding year, the months of April and October?

A. Yes, sir.

Q. And you made an accurate computation of the tons hauled in the different classes of freight that you were moving, and made a comparison between them for those two months?

A. Yes, sir. I took the specific records of the scheduled trains.

Q. But the point I am getting at is, whether you got as cor-

rectly as you could the amount of tonnage carried in the different classes of freight?

A. Yes, sir.

Q. That was one of your purposes——

A. You say different classes of freight. I did not get them by classes.

Q. I mean the two classes of freight we speak of, through freight and local freight?

A. Yes, sir.

1159 Q. You did get the number of tons per mile in each of those classes?

A. Yes, sir.

Q. You could not well have made an intelligent comparison as to the relative cost without that, could you? You regarded that as a factor you would be compelled to have to testify intelligently upon that subject?

A. Yes.

Q. That can be gotten in all cases, can it, the data you speak of?

A. It is a matter of work.

Q. And some little expense?

A. Expense, certainly.

Q. And it is your opinion now that you could not testify with accuracy or correctness, in making that comparison, unless you had that one fact as to tonnage?

A. Not along those lines.

Q. The result of your figuring was to show how the rates were compensatory upon the local freight, the freight proposed to be affected by the rates?

A. No, sir, I do not claim that. The conclusion I came to from my own figures was, that if they had left the rates alone, there was probably enough to pay the interest on the bonds.

Q. I understood from your testimony that you could have

1160 made a much better showing for the company by including the branch lines, if it had been necessary to do so, and I took it from that, that you made as good a showing as could be made for the railroad company, without including the branch lines?

A. I did not take the ground that it was necessary to prove to a reasonable body of commissioners, or to a court, that we were carrying on business at a loss. I thought it would be sufficient to prove that the rates were not more than enough—I will put it that way—not more than enough to pay the cost of doing the business, the taxes, a proper portion of the interest on the bonds, and a reasonable dividend on the stock. If I could prove that to be the fact, I thought that a reasonable body of men would say that the rates were not too high. I did not claim it did that, but I laid down as my proposition, that if I could prove to a court that the rates were not more than enough to pay the cost of doing the business, the taxes (which in our State are based on the gross earnings), a proper proportion of the interest on the bonds, and some dividends to the

stockholders, not an unreasonable amount, I had proved my case. But the figures I made show much better than that.

Q. And you could have made them show much better, if you had taken into consideration the branch lines?

A. Yes.

1161 Q. In your figures given yesterday concerning the operating expenses, you omitted taking into consideration certain items which are usually grouped under operating expenses, such as maintenance of way and structures, general expenses, and certain items under the head of "cost of conducting transportation." Omitting those items out of your computation did not affect materially the correctness or trustworthiness of the results you reached, did it?

A. I think in this way, by leaving those out I was putting myself on firmer ground. Of course, when you come to apply my figures as against the rate, you forgot to take into consideration how much of this should be applied to a reasonable proportion of the cost of maintaining the property, and a reasonable proportion of the general expenses of administering the property.

Q. But let me ask you this question: when you started in with your investigation, you did not know in advance what result you would reach?

A. I did not, indeed.

Q. And the reason for leaving out those items you did leave out of your calculation, must have been that you did not think they would materially affect the result?

A. No, sir, that was not the reason; it was because of the inherent——

1162 Q. Didn't you say yesterday that the general expenses ought to be left out, because they would not and did not affect the calculation you were making?

A. What I meant was, that they were not applicable to the general character of the business. It is a well recognized principle that every business must have a head, and you must provide for the maintenance of the head.

Q. What would you say to-day, that your figures were substantially correct with those items omitted from your calculation?

A. They are correct as to what they purport to establish or prove.

Q. That is, that the relative cost of conducting local freight as compared with through freight——

A. Handling and moving.

Q. Local freight as compared with through freight?

A. Yes.

Q. That is what you were figuring on?

A. Yes, that is what I included. Now, of course, after you have applied your cost of handling and moving, then you have got to take into account that out of the profit that is made above that, you have to pay a proportion of your expense of maintenance. But I did not undertake to figure how much the proportion of cost of maintenance would be. You have also to provide for general expenses, but I did not figure that. Then you must take care of the taxes.

That is the order in which they come, expense of maintenance, general expenses, and taxes.

1163 Q. Your object was to see whether or not——

A. Those are the things that affect the handling of the business. For instance, you had your property to begin with. As one of the witnesses stated the other day, I think it was Mr. Elliott, a railroad will run down if you do no business at all.

Q. We understand that, Mr. Gray.

A. I could give you a case in point, if necessary. I think Mr. Fisher is particularly familiar with the Washburn Railway, which was idle for a long time, and had to be practically re-built when it was started again.

Q. Was it your general purpose, in making this investigation, to ascertain whether or not freight of the classes mentioned would produce enough to pay all the operating expenses, and all the expenses that were legitimate charges on such freight, and then see whether or not it would pay anything for profit on the investment.

A. I did not go so far as that. I simply took the expenses that are incident to and necessary for the handling and transportation of the business, after you get your road—now, the thing is, if after you have got your road, if you can double the volume of business, it does not double the cost of doing it, taking everything into account.

Q. But that would be considered as being represented in the bonds of the company or the value of the property?

A. Yes, but we must maintain it. That, of course, is not

1164 covered in it. You have got to keep it up. I want to say this, if it is permissible: questions have been asked of various witnesses in my hearing, and some experts whose names I do not recall—I have a wretched memory for names—have stated that the maintenance of plant, which to me is one of those indeterminate terms which I object to—I like to be more specific—at any rate, they said that maintenance of plant should be divided between local and through on the basis of volume of business—which is another rather indeterminate expression. I presume they mean not volume of train, or volume of earnings, but volume of tons. That is the understanding, isn't it?

Q. Yes.

A. I absolutely repudiate that. I say those men have not looked deeply into the question or they would never have laid down any such proposition as that; because talking of volume of business in that way, and applying it to maintenance of way and structures, takes no account of what was spoken of as "dead weight."

Q. That comes in again on what you spoke of, "Gross tons"?

A. Gross ton mile. If it becomes necessary to divide the maintenance of expense, the gross ton mile—while perhaps there may be little objections against it, is the nearest to being right of any factor I know of, to be applied to a division of maintenance of way and structures.

Q. Don't you think, Mr. Gray, that your theory of the gross

tons of the dead weight being taken into account, is very
1165 susceptible of abuse, as a basis of making these estimates?

A. Why?

Q. Well, if the company knew that a question was to arise, as in the case you speak of, in advance, it is entirely within your power to make the dead weight as much as you see fit, and select any month, as the month for making the test—I say, if they saw fit to do it?

A. I would not like to be a stockholder in a company that did business that way.

Q. You made your test on two months, out of years and years?

A. Yes.

Mr. HAGERMAN: He took two months that had passed.

A. The thing was past and done.

Mr. KENNISH: It was in your case?

A. That is very far fetched, to put that in that way. The proposition is, that in order to show an immense dead weight, a road would haul a lot of empty cars up and down the line, go to the expense of that, simply to swell the gross tonnage. A road that would do a thing like that, I would not want to be a stockholder in. That would be one of the most outrageous propositions I ever heard of.

Q. You were speaking of inaccuracies of tests?

A. In substance, you can put pin-pricks in any of these things, but you cannot drive a coach and four through them.

1166 Q. In your statement from which you read yesterday, Mr. Gray, you say that your train schedules show that the average distance per day covered by the way freights, was about 40% less than the through freights?

A. You are stating it the other way, if my recollection is right; 40.78% more in the other case.

Q. More in the through freight than in the local freight?

A. Yes. Those are the printed schedules.

Q. As a rule, through engines will make about double the distance on an average, to that of engines engaged in way freight business?

A. I think you had better go back to Mr. Willard's testimony on that.

Q. We would like to have your knowledge as an expert. Mr. Willard's testimony stands for itself. You were brought here as an expert by this company.

A. But not on train operation.

Q. You gave that in your testimony?

A. I gave it in the testimony, and I believe it to be accurate.

Q. That the distance covered by engines hauling through freight would be 40% greater than the distance covered by engines engaged in the local freight business?

A. That is what the schedules provide.

Q. Is it your judgment that that is about right?

A. I have never heard of any very serious departure from
1167 that. It is a general rule.

Q. You gave that in your testimony?

A. That is in the schedule, and that is what I have to abide by.

Q. In estimating the cost of an engine, or compensation for the use of an engine engaged in way freight business, you gave those figures; the value of the engine you gave as $14,000?

A. Yes, sir.

Q. And you allowed the company 5% per annum interest on that value?

A. They would have to pay 5% and more for the money that bought the engine.

Q. Isn't that in direct contradiction to the theory you have been announcing here, that you were figuring to see whether or not the freight carried would pay all expenses incident to it, and then if there was anything left for profit, or not?

A. The thing that I was setting up there was the value of an engine per day, or per mile.

Q. But you were not going to allow the company interest as a part of the operating expenses, and then a profit in addition to that, were you?

A. They are entitled to their profit, after the operating expenses. At any rate, I want to say this, once for all: wipe that whole engine proposition out of the calculation, and it will not affect the result at all.

1168 Q. It is put in your evidence, and I am cross examining you about it. You have placed the value of an engine at $14,000?

A. Yes.

Q. I don't care whether the company paid for it, or borrowed the money; that doesn't make any difference in this calculation, not at all.

Was it your theory, when you got up those figures, that the company was entitled to interest upon the capital invested in its business, and then entitled to a reasonable profit in addition to that?

A. What I was getting up those figures for, was the cost of handling and moving the business; and you cannot get that up without taking into consideration the interest on the amount invested in that particular business.

Q. If that cost equals the revenue received, your idea was that the rates fixed by law would then be confiscatory, or would be such, you said, that the commissioners would not put them in force?

A. It would in that case.

Q. Was that your theory, Mr. Gray?

A. If the expenses equalled the revenue, it would be confiscatory, yes.

Q. The rates put in force by the commission would be?

A. Yes.

Q. You had already allowed the company interest on

1169 the investment?

A. Well, if you please, it is a trifling matter. But you cannot build up the cost of doing the business without taking that into account.

Q. If the company had their plant, or their engines, paid for,

do you think it was fair to allow the company 5% interest on the value of those engines as a part of the operating expenses?

A. It was, if you are going to build up the cost per engine per mile for doing it.

Q. Then if you come to the conclusion, as courts sometimes do, that a reasonable return on the investment is five or six per cent, or somewhere along that amount, in order to uphold the law that is in question, before this law would not be confiscatory you would want the company to receive 5% interest on the investment, and 5% return upon the investment, which would make 10%?

A. I don't go that far at all. What I was doing, and never more than that, was to determine the cost of moving and handling the freight, and you cannot do that without taking into account depreciation——

Q. But that is another element. You did say that if that cost would equal the revenue received, that the law fixing the rates, or the act of the commissioners in your State fixing the rates, would be confiscatory.

A. My dear sir——

1170 Q. Is that right, Mr. Gray?

A. That is only a mere——

Q. That may be, but I am getting at your theory in getting up these figures.

Passing from that: you have allowed the company on this first item $700 as interest on the value of the engine, as a part of the operating expenses?

A. Yes.

Mr. HAGERMAN: I don't think it is fair to call it part of the operating expenses. The witness was taking the appliances used, and counsel for the State sets out to find out the difference in cost.

Mr. KENNISH: I submit that the witness can be re-examined, if Mr. Hagerman wants to do that.

The MASTER: I think it is proper cross examination. If counsel assumes something that is erroneous, and thereby misconstrues the conclusions or statements made by the witness, you can reach that on re-examination; and I have no doubt the intelligence of this witness is such as to fully fortify him against any misunderstanding of that sort.

Mr. HAGERMAN: The point of my objection was that Mr. Kennish was wrongfully assuming something, in saying that the interest on the investment was part of the operating expense. That is not what the statement is.

The MASTER: It is not likely to mislead the court, if it is a
1171 wrongful assumption. I think this is proper cross examination.

Mr. KENNISH:

Q. The next item you have is, depreciation at 6% per annum: That is depreciation in the value of the engine?

A. Yes.

Q. And that makes the amount of $840?

A. Yes.

Q. Then you have "use of the plant, including shop buildings, machinery, tools, side tracks, round houses and stock of material, estimated at six million dollars, at 5% per annum, apportioned to 915 engines, $327.87"; you charge that to expenses?

A. But I charge the same thing to the through; so one offsets the other.

Q. I know that. We will come to that directly..

A. And I charge a higher rate of interest to the through, than I do to the local.

Q. Yes, but your purpose in making those figures——

A. Is to build up a cost per mile of engine service.

Q. And to show that the proposed rates——

A. And if it wasn't that I wanted to make this statement scientifically accurate, I would want to wipe out the whole thing, and would want to say, because I know it is true, that you can blot out this whole engine cost, and it will not affect the statement at all.

Q. If you will let me go on, we will get through a good deal faster.

That item is $327.87?

1172 A. Yes, spread over 917 engines.

Q. That is for use of plant, including shop buildings, machinery, tools, side tracks, round houses, and stock of material estimated at $6,000,000 at 5% per annum, apportioned to 915 engines.

A. Yes, sir.

Q. That means this, that you take the interest on the capital invested in that part of the railroad property?

A. but I took it in both cases, mark you.

Q. That may be. It may be that you did not take it in either.

A. Throw it out, if you like. I will allow your experts to cut the whole thing out, and see if they weaken my figures.

Q. It is not a question of pitting our experts against yours, but I am simply examining you as to your figures.

A. I did what I thought was right to get the relative cost.

Q. You get outside the questions I ask you, and take up a great deal of time.

The MASTER: Try to give specific answers to the interrogatories propounded, and then add such explanations as you desire.

Mr. KENNISH:

Q. Can you give the Master any reason for charging to the use of this engine the cost of putting in round houses and side tracks, that would not apply with equal force to the roadbed over which the engine runs?

1173 A. Yes, sir. That we buy outside almost all our engines and a greater part of our cars. If we could have our engines and cars repaired outside, we would not need that property.

Q. You think that makes a difference?

A. It does.

Q. From what it would be if you owned this property yourself?

A. Yes.

Q. Your own company own it.

A. Yes. We would have to pay the cost of doing that.

Q. If your company owned this property that you enumerate here, machinery, tools, sidetracks, roundhouses, shop material, etc., you would not put that in as an element of the cost of operating that engine, would you?

A. You use the expression "Cost of operating."

Q. Compensation, then, for the use of the engine: that is the way you put it?

A. For the use of the engine?

Q. Yes.

A. If we would have to pay rental to an outside party, I would charge that up as a part of the cost of the engine service.

Q. The question I asked was, if your company owned this property enumerated here——

A. It does.

Q. ——then you would not charge interest, as you have done here, as a part of the compensation for the use of that
1174 engine?

A. I have done so.

Q. You say you would not?

A. I say I would.

Q. You would charge it up?

A. Yes. Not as a part of the cost of operating.

Q. As compensation for the use of it, then?

A. Yes, sir.

Q. Didn't you give, as a reason why you put that item in, that your company had to hire or pay for that work?

A. You must not have heard me correctly.

Q. What was your statement?

A. I put it as a possible case. Suppose the company was very poor, like some of these little roads built through the country are; they have to hire this work done for them. I say, in order to show the reasonableness of this, that this is not property necessary to the running of a railroad, but it is property which is necessary to the economical running of the road. An up-to-date railroad will have all this property. But it might go to someone else to have this repair work done, and in that case it would not have all this stock of warehouse, sidetracks, shops, and material. The people who did the work would have to have these things, instead of the railroad itself.

Q. But this property would be charged up as the property of the company, represented by the general value of the company's
1175 property, the same as the roadbed or the depots, or any other values it owned, wouldn't it?

A. If an appraiser, appointed by the courts or otherwise, was going to make an estimate of the value of railroad property, he would take account of these as separate items.

Q. On your theory of making your investigation, would you have counted these properties in as separate from the interest that you have allowed on them, by the use of the engines, in this case, or would you have deducted the six million dollars value of these prop-

erties from the total value of the roadbed and structures of the company?

A. It should be done, yes, sir.

Q. Did you do that?

A. In making a separate appraisal——

Q. Did you do that?

A. I had no occasion to do that.

Q. You did not get that far?

A. I had no occasion to do it.

Q. If in your computation there would have been some revenue in excess of the cost of doing the business, it would have been necessary for you to put an estimate on the value of the property?

A. As you said just now yourself, I did not go that far.

Q. I understood you to say some time ago that in your
1176 figures there was something over the actual cost of doing the business?

A. I think there was. As I say, I did not go that far, because I did not undertake to figure out just how much ought to be allowed for maintenance or taxes, etc.

Q. The next item you have here as compensation for the use of the engine is "Average repairs per engine mile for the fiscal year 1905, 6.83": how much would that make for a year, estimating as you have here that the engine covered a distance of 30,000 miles?

A. It would be a mere arithmetical calculation.

Q. It would be about 2,000 miles, wouldn't it?

A. That would be about right.

Q. Then you have figured up in your calculations here, as compensation for the use of one engine, worth $14,000, over $4,000 per annum, haven't you, or about that amount?

A. For the use of it?

Q. Compensation.

A. You have the figures in your hand.

Q. See what it would come to.

A. $1,867.87. There is no $4,000 about it.

Q. That is for the first three items?

A. That is the whole thing—oh, in addition to that, yes, there would be the repairs.

Q. $2,000 more?

A. $1,800 more.

1177 Q. It makes more than $1,800. It is about $4,000, isn't it?

A. Yes.

Q. And you say that is a reasonable estimate for the use of an engine for one year?

A. Taking into account all the expenses connected with it, yes.

Q. Now, you had allowed in that for the depreciation, $840?

A. Yes.

Q. And yet you have allowed about $2,000 for repairs?

A. Yes, that is right; all necessary.

Q. $840 each year for depreciation, would soon amount to the value of your engine, wouldn't it?

A. May I explain that? The depreciation here is set at 6% per

annum: that means that the engine must live 16⅔ years in order for the depreciation to use it up. I do not think the average use of engines in this country comes up to 16 years.

Q. Now, when you spoke about making the same charge for engines that were engaged in through freight——

A. I made a higher charge.

Q. Higher because the value is higher. That is the only element that is higher, isn't it?

A. I did that to be fair to the State. As a matter of fact there might not be any such difference in the value of the engines, but I wanted to be fair to the State.

1178 Q. Do you think you were fair to the State when you took 30,000 miles, the same mileage for the through freights as you did for the way freight engines?

A. Yes, sir.

Q. And you say the way freight engine makes 40% less mileage than the through freight engine?

A. Not in the course of a month. And there is this about it: One engine may be much longer in the shop than others.

Q. We were talking about averages. You were speaking of averages when you gave the distance traveled by way freight engine as 40% less than the through freight engine—in a year, say?

A. No, sir, not in a year. I applied it to the hauling of a certain number of cars. It might be done in five minutes.

Q. Weren't you speaking of the greater mileage that was made by the through engine, as one reason that the cost would be less than on through freight?

A. No, sir, I was not.

Q. Why did you make that element at all, then, the distance traversed by the way and through freight engines?

A. This is a question of the actual cost of doing business. Referring to the items——

Q. Putting it in another way: The through freight engine makes a greater mileage than the way freight engine. That

1179 is a fact?

A. In certain hours, perhaps.

Q. Say in the year?

A. No, sir.

Q. Didn't you, or some witness, testify that a through freight engine would probably make a return trip over a division in one day, and the way freight engine go only one way? Was that your testimony?

A. No, sir.

Q. It would necessarily make double the mileage.

A. It would perhaps in that week, but not in the year.

Q. Why would it be different in a week or a year than in a day?

A. Because an engine must get rest some time, and it must be in the shop some time.

Q. You think the through freight engine must be rested enough to make up the difference in the mileage made per day by each?

A. There may me a trifling difference. It might be the other

way. I say to you, and I want to say it as a reasonable man, we cannot afford to be here splitting hairs on this thing.

Q. I will assume that. We want to be reasonable about these things.

A. I want to say this: That in this comparison, if you wish
1180 to have anyone for you, or yourself, to see what the effect would be of using your own figures for the mileage, instead of mine, or eliminating the whole thing altogether, what would be the effect on the final result. You would find it so trifling you would let it remain.

Q. You have said that several times.

A. Perhaps you do not believe it, and therefore I ought not say it again.

Q. I have taken it for granted, Mr. Gray, that when you say it once that is sufficient.

A. I say if it is not, it is so trifling that it is not worth taking into consideration.

Q. If you have figured those small items on that theory you may have figured the large items on the same basis. I see no reason why you should adopt a different theory when you take into consideration other elements of more importance than these minor elements.

—. Let us pass to the next item "Terminal service: The cost per ton for terminal service, including interest on the fair valuation of the property, is based on results at the St. Paul freight house and yards, which are used by the Northern Pacific, the Minneapolis & St. Louis, and the Soo lines, and on which we have a record of the rentals paid for the use of the property. The average cost per ton is found to be approximately 78.76¢, and assuming that this class of ser-
1181 vice could not be performed at stations along the line for less than it costs at St. Paul, where the volume of business is heavy, the cost for merchandise within the state would be approximately 8¢ per cwt. for what is commonly called 'station service.'" This is made up as follows:

Warehouse Freight:

Cost of handling, including use of property,, 55.16¢ per ton.

Q. What do you mean by the term "including use of property": You are speaking of the St. Paul terminal?

A. Yes, sir.

Q. Now what did you take into consideration in that?

A. The use of property in this case is determined by the rental we receive from one of the tenant companies on the warehouse business, which we know to be a very low rental as compared with the present value of the property.

Q. What did you estimate the value of the terminal to begin with, to be?

A. I did not put an estimate on the value for the reason that I had this rental.

Q. But you could put an estimate on the value, because the rental would be really one way of getting at that estimate?

A. Exactly, but I did not put it, because, as I say, it was unneces-

sary. If I wanted to put a value on the property, I wouldn't
1182 undertake to do that. I would go to our chief engineer and ask him to have that prepared.

Q. But rental of property is one way of estimating value, isn't it?

A. Yes, but there is one thing about it, and that is, that the contract on which this rental was based was a contract made in 1894 or 1895, when the road was in bankruptcy, and the whole country was in a state of panic, and everything was down at the bottom.

Q. Now, of course, if this was an important matter—I want to say this, this evidence was submitted to the Board of Railroad and Warehouse Commissioners of Minnesota, who were there in St. Paul, and familiar with the facts,——

Q. That would be inadmissable, clearly. We don't care about what the Board of Railroad and Warehouse Commissioners of Minnesota said or thought about it. That is what you are now testifying about, isn't it?

Mr. HAGERMAN: Let him finish.

A. Of course this is 1906. It is not possible for you, here in Chicago, at this distance away, to go into the question of the value of that property. You must either accept it or reject it.

Q. You have stated here "for the use of property" and I asked you what you mean by that term, and what value you put upon the property that you are charging for the use of?

A. As I say, if I were to put a value on the property, I would put it much higher than the value indicated by the rental,
1183 divided by say either four or five or six per cent.

Q. What do you put your value on?

A. I say that from purchases of real estate made adjacent; I would want to undertake, before I made a value, if I undertook *it* make it at all, I would want to go into values, tracks, etc. I couldn't do it here at this time. You must either throw it out of court as being unworthy, or accept it.

Q. As your estimate of the value of the property?

A. You have reached a point where you must either throw me out of court or accept my statement as being reasonable.

Mr. HAGERMAN: Or go to Minnesota and get the facts?

A. Yes, sir.

Mr. KENNISH:

Q. Were you a witness in the case of Steenerson vs. The Northern Pacific Company?

A. I was not.

Q. Wasn't that same issue raised in that case?

A. I don't know.

Q. Wasn't that your home?

A. I was living in Chicago at that time.

Q. Could you make any division of these two items, cost of handling and the use of the property per ton, how much would be chargeable to each?

A. Yes, sir. That 55.16¢ is made as follows:

For rental of the freight house 20.07
For maintenance 1.77
For insurance 0.45
1184 For station supplies, light, heat, etc., 3.44
For the station pay roll of the warehouse 29.53
That makes it 55.16¢

Q. How much of the figure 76.15¢ per car is made up of interest on the value of the property used?

A. Of the 55.16, the $10,000 for rental.

Q. Rental of the warehouse?

A. That is, of the warehouse and warehouse tracks.

Q. $10,000 a year?

A. Yes, sir, and for the yard there is another $10,000 a year. There is a yard, a very expensive yard used. But one company uses the warehouse, and its adjoining tracks, and the other company uses the yard, and both companies pay $10,000.

Q. $10,000 each?

A. Yes, $10,000 each.

Q. $10,000 for the warehouse and $10,000 for the yard?

A. The $10,000 paid by one company is for the warehouse and yard, and the $10,000 paid by the other company is for the yard?

Q. $20,000 by both companies for the use of warehouse and yard?

A. Yes, sir.

Q. How much of the 76.15 per car is made up of that? What per car is your estimate of that?

A. That includes the office work.

Q. Warehouse freight you said.

1185 A. That includes $10,000 or 15.87¢.

Q. It is that much per ton. Now, how much per car?

A. That is the cost per car. 15.87¢ per car. That would be, say ½¢ a ton.

Q. Do railroads, as a rule, charge for the depreciation of their rolling stock, Mr. Gray?

A. I am sorry to say they do not. But they ought to.

Q. You think they ought?

A. Yes, sir. And I think the Inter-state Commerce Commission will probably make them do it. I think that is one of the good things that the Inter-state Commerce Commission is going to do; to compel the railroads—I am not saying this by authority, but I think that is one of the things they will be compelled to do, to make some sort of proper provision for charging off something for depreciation of their rolling stock.

Mr. HAGERMAN: Create a fund for wear and tear?

A. Yes, sir.

Mr. KENNISH:

Q. I wanted to have you explain how you arrived at the figure of 6.83¢ per mile as representing the average repairs on an engine: How do you arrive at that figure?

A. We took the total cost of our account, renewals and repairs of

engines, and divided by the total mileage. We make statistics for the information of our superintendents and master mechanic,
1186 from month to month, and year to year, and this figure is prepared for their guidance and information.

Q. You have no knowledge at all of the railroad situation in Missouri. Your testimony is given entirely as an expert with reference to the railroad property in Minnesota, and the classes of freight that you are making this calculation on, as to relative cost of conducting?

A. My attention has been solely concentrated on one point, and that is to show as thoroughly as my figures may be correct, the relative cost of handling and moving local freight as compared with through freight. I have not had in my mind, and did not expect to be asked any questions as to right-of-way property outside of that, or right-of-way management outside of that.

Q. You were examined to some extent yesterday by General Hadley, as to the different bases of apportioning the cost of doing intra-state freight business as compared with inter-state freight business, and as I understood you you said that any basis except that of tons per mile, was fallacious.

A. If it is a question of getting down to the cost of doing the business, the proper basis for determining the cost of doing the business—of course, it depends upon what unit you use. There are several units that have been used. For instance, the unit that used to be used by engineers and experts,in days gone by,
1187 was the ton mile. And one of the brightest engineers in this country would lose his patience with me if I controverted that today.

Q. Confining ourselves to the two theories now, the tons per mile and that of gross earnings of inter-state as compared with State freight business——

A. My investigations have all been along the line of the ton.

Q. And the basis of making an apportionment on gross earnings is fallacious because it leaves out of consideration the element of revenue received by the respective classes of freight?

A. I would qualify that to this extent. If it was known that the revenue of the different classes bore a reasonable relation to each other, in forming a general opinion, it might be well enough to take that into account. But with me, I have not attempted to express an opinion—of course, I have had to use some estimates in my figures, but I have sought in making my conclusions to base them upon ascertained facts. If you please, I am a sort of a machine. I have not attempted to give an opinion. I have rather avoided that, until you have asked me my opinion about various things, and I have answered you. I have sought to be as much of a machine as possible in this thing, in ascertaining from certain facts certain conclusions.

Q. But you would not and could not give an accurate estimate of the apportionment of these expenses between State freight
1188 and inter-state freight, unless you took into consideration the revenue received from each class of freight, could you—the rate per ton per mile, say?

Mr. HAGERMAN: The expense of doing the business?
Mr. KENNISH: Yes, of doing the business.

A. I would in that case have assumed that the relation between the rates for doing the local business, the merchandise business, and the rate for doing the long haul or through business, were reasonably adjusted with reference to each other.

Q. That they sustain about the same relation to each other?

A. Yes.

Q. The cost of doing the freight business, compared with the gross earnings on freight, you said yesterday, I believe, on the Burlington was about 60 and on your road about 50 or 55?

A. It varies from year to year.

Q. The Burlington is higher, you say?

A. The Burlington is at least 10% higher than upon the Northern Pacific, for good reasons I have no doubt.

Q. Assuming that the cost of doing the inter-state freight business, would be say 60%; and that the gross earnings of the State business was 20%, of the gross earnings of the inter-state business; and assuming that doing the State freight business cost three times what the inter-state business cost, would it be possible to make
1189 that computation on that basis so that the railroad would get any profit out of the State business, no matter how high the rate on the State business might be, and supposing there was no restraint upon the company in placing the rate as high as it might see fit to place it?

A. Supposing that the expense was 60% and that the 20% of total earnings were local to the State?

Q. Yes, and that it cost three times as much to do the State business?

A. That would be 180%?

Q. Yes. Would it be possible on that basis for the railroad company to make any profit out of the straight business, no matter if the rates on straight business were ten times as high.

A. Of course, that goes without saying, if you have to pay out 180%, you are 80% in the hole to begin with.

Q. So on that basis it would be an impossibility for the railroad company to ever realize any profit on the State traffic?

A. Yes.

Q. No matter how high the rate would be placed—in fact, the higher the rate——

A. No, sir, the effect if you raise the rate, is that you raise the earnings, assuming the volume of the business to be the same.

Q. But you start in by taking three times the cost of
1190 doing State business as compared with inter-state, and that puts you above 100% to begin with?

A. But suppose you could raise the rates 50%, it would not cost 50% more to do the business.

Q. Raise the state rate?

A. Yes, suppose you could raise the State rate 50%, that would raise the revenue 50%, but it would not cost any more to do the business, unless you had to pay your help more.

Q. But doesn't this system of figuring the cost leave out of consideration the revenue altogether?

A. I don't know what the system is. I haven't read the testimony, and have not been present at the beginning of it.

Q. The system is eliminating the question of the rate received, altogether, in apportioning the expenses, and confining yourself to the gross earnings to each class of freight, and assuming that the cost of conducting the State freight business is three times the cost of conducting the inter-state business: Now, I say, on that assumption, and that theory, that it would be an impossibility to figure, or to state, any case in which the railroad could receive a profit from the intra-state freight business?

A. There is this that modifies the question, and that is that the 60% of expense applies to all the earnings. It does not apply specifically to that or this portion of it, but the whole thing.

Q. But assuming it applies to the freight?

1191 A. I can concede that ratio of expense was 180%, but I can concede that on the other business it would not be more than 35%.

Mr. HAGERMAN: The three times is applied only to the 20, which makes it 60 instead of 180?

A. You must bear in mind that this 60% is not a per cent which applies to any consignment or business between any two stations but to freight all over the State.

Mr. KENNISH:

Q. I was assuming that the cost of inter-state freight was 60% of the gross earnings.

Mr. HAGERMAN: I thought you were assuming that the cost of all freight business was 60%.

Mr. KENNISH: We have had it stated both ways. I believe Mr. Sturgis finally confined it to the doing of inter-state business, but it would make no difference in this question, whether it was one or the other.

A. I can quite believe that there may be business done in the State of Missouri on which the expenses are 180% of that particular business. Then there may be other business on which the expenses, as I say, would not be more than 35%. It is remarkable the difference. Now, in making our State reports, the cost of doing the business in some of the States, the operating expense is much less than in others.

Redirect examination.

By Mr. HAGERMAN:

1192 Q. Mr. Gray, this statement which you introduced was gotten up, as I understand you, for the purpose of showing the comparative cost between through shipments and way shipments?

A. Yes.

Q. With the result, that it costs from 7 to 11 times in the different alternatives, as you put them, in that State, to carry the way freight as it did to carry the through freight?

A. Yes, sir.

Q. In making that comparative statement you excluded any consideration of the general expenses?

A. Yes, sir.

Q. Now, what other item did you exclude?

A. Maintenance of way and structures.

Q. But everything else that went in is an element that went into both accounts, in order to make your comparison, including the particular property devoted to that particular thing?

A. Yes, sir.

Q. So where you get in the use of an engine in the way business, you have also put in the use of an engine in the through business?

A. Yes, sir.

Q. And one practically offsets the other?

A. Yes, sir.

1193 Q. And so with the use of the facilities?

A. Yes, sir.

Q. I wish you would be a little more specific about what you mean as to the difference between the gross ton per mile and the net ton per mile?

A. I will be glad to do so. The gross ton per mile is the weight of the vehicle, plus the weight of the contents. The net ton mile is a ton of the contents, regardless of the vehicle.

Q. Now, how did you figure it in your statement, both ways?

A. I figured it on certain things, the cost per gross ton mile; and then in drawing the deduction it was based upon the freight which was carried in the cars.

Q. And how did you arrive at that tonnage?

A. The gross tonnage, I found that the business that was hauled in local and through freights over two divisions of the Northern Pacific, during the months of April and October, 1905, figures so many gross tons one mile and so many net tons one mile.

Q. Did you get at it accurately or by some kind of estimate?

A. There was no estimate about it.

Q. What is the way of ascertaining it from the ton mile instead of train mile ?

1194 A. It is simply a mathematical problem. It is an easy matter to arrive at the train miles. The train starts our from St. Paul and goes through to Fargo, which is 250 miles. That is all you have to take into consideration?

Q. Who was it you said adopted that theory of figuring the cost?

A. It was adopted by the engineers and professional experts, in days gone by.

Q. And what other ways have been figured out to ascertain the actual cost of doing the business, instead of the ton mile or the train mile?

A. On certain business you might figures on the basis of car miles.

Q. What would that be?

A. The number of miles each car ran in the train.

Q. That has been adopted by some people?

A. Not to apply to expenses generally, but to particular expenses.

Q. To the movement of freight—to the movement of particular cars?

A. Yes.

Q. Are there any other ways?

A. In arriving at expenses, some have divided on the basis of the road mileage, say in dividing between States.

Q. What do you mean by "road mileage"?

1195 A. Suppose you have 150 miles run in one State and 100 miles in the other, it would be apportioned on that basis, regardless of either the volume of the business or the earnings accruing to the State.

Q. Are there any other methods?

A. There is a method which has been used perhaps, which is the number of tons put into the trains, regardless of the distance they have been hauled.

Q. Of all these, you prefer to ascertain the actual cost of doing the work, upon the ton mile basis?

A. That is my judgment.

Q. And in ascertaining it the question of revenue cuts no figure in your mind whatever?

A. None whatever.

Q. In other words, in finding out the cost of doing business, whether upon the ton mile basis, or some other basis, the question of revenue does not cut any figure in reference to that particular cost?

A. None whatever.

Q. And you have made no figures upon the basis of arriving at the question of depreciation in revenue at all, for the purposes of this case? Our ultimate inquiry in this case relates to depreciation of revenue, whether it is reasonable or unreasonable. To that side of the controversy you may have given no study?

A. I have. It is on the first page of this statement. I did 1196 not bring it in here, because I did not consider it affected the State of Missouri. I did, at a considerable expense, figure out what the percentage of loss to the Northern Pacific was, approximately, per annum, in the State of Minnesota, by reason of the introduction of these rates.

Q. On those particular commodities at that particular place?

A. Yes, sir.

Q. Going a little further back, you did not do anything of that kind with reference to the Missouri situation?

A. Nothing whatever.

Q. Mr. Kennish said something about some statement of yours, that anything on a ton mile basis was fallacious: As I understood you, you were saying you were contending that in your judgment that was true as to the method of ascertaining the expense of doing the business?

A. In determining the cost of moving and handling freight, relatively, I do not think you can take the revenue that may be received on that freight into consideration; because that revenue may vary, up or down. If, as I have said before, the revenue was reason-

ably fixed, and there was a reasonable adjustment as between the rates on the local business and the through business, then, of course, it might be proper to express an opinion as to the relative cost of doing the business.

Q. Of course the ideal thing would be to know the exact cost of each item and the exact receipts as revenue from that par-
1197 ticular thing: But we have a situation where we cannot obtain the exact thing and we have got to get some approximation.

A. Yes, sir.

Q. You heard Mr. Willard testify here that the business in Missouri was divided practically into three classes.

A. It is in every State. I had occasion once to make figures on that.

Q. He said, strictly State business, that class of inter-state business which starts outside of the State and stops in Missouri, or conversely, starts in Missouri and stops outside the State some place; and the class of business that goes through the State without stopping at all, this latter class being about 60% of the whole?

A. Yes, sir.

Q. Your figures did not go into detail upon that kind of a distinction: I would like to have your judgment about how much more it would cost to do that strictly State business than it would to do the inter-state business.

A. I will answer that in this way: that inasmuch as the State business would have two terminal charges, and would necessarily have a shorter average haul, it would cost very much more per unit than the business which came into the State on one side and went clear through and out on the other side, without any terminal expense whatever.

Q. Then how as compared with this business that starts out of the State and comes in, or starts in the State and goes
1198 out?

A. That would be affected to the extent of one terminal charge, and would probably, in practice be affected by the longer haul, because, so far as my observation goes, business of that kind is not usually between nearby points. It is rather a rare case the gentleman spoke of, a shipment going through from Chicago to some point 20 miles north of St. Paul, or 100 miles. In that case, before it got to the State there would be 400 miles haul in Illinois and Wisconsin.

Q. The long or the short haul affects the question very materially?

A. Yes, sir.

Q. The question of a full carload affects it very materially?

A. Yes, sir.

Q. And the question of these short shipments, and the difficulty of getting cars, sending a long distance and having to carry back the empties—all that affects the question?

A. Yes, sir, very materially.

Q. Taking all that into consideration, what is your judgment as

to how much more it would cost to do that State business as compared with the rest of it, sub-divide it, if you wish, the stuff going clear through without stopping, or take it as a whole?

A. As I said, I am, perhaps, a good deal of a machine
1199 in that respect, I don't like to give estimates without figures; and that is perhaps the reason why I like to have my figures respected when I give them, because I base them on facts. I am satisfied that in the figures I have given, that business which comes in one side and goes out on the other side, the cost per unit would be very much less.

Q. How much greater would be the cost of doing the local business than the other?

A. The State's proportion of the business—of course, I cannot say as to that. It certainly would not be less than seven times for the handling and moving.

Q. So that if 60% of the freight business in Missouri was this stuff, inter-state, that goes through without stopping, at least in that it would cost at least seven times to do the State business that it costs to do the other?

A. Yes, sir.

Q. I think either counsel on the other side or I misunderstood you. I understand perfectly your view, that in ascertaining the expense of doing the business you prefer to do it by the ton mile system; you think that is the way to do it, and that the question of revenue does not enter into it. But we are making an inquiry here into depreciation of revenue. As I understand that statement it is practically this—and I want to see whether you agree with it: That of necessity, in inquiring into depreciation of revenue you have got
1200 to consider the extra sum, if any, that you receive, somewhere along the line, the extra sum you may receive in handling the local or State business as against the inter-state business?

A. You certainly have got to take that into account, or you could never go into court and attempt to set aside the rate that might be imposed.

Q. Somewhere along the line that must enter the question in some way, and must be considered: You agree with that?

A. Oh, yes.

Q. As I understand the question, if in the end in ascertaining the depreciation in revenue, from the revenue standpoint alone, if you take the thing upon the basis of revenue received, then you have included, absolutely and unconditionally, every element that brings money to the coffers of the company: That would be true, wouldn't it? You agree with me about that?

A. Yes, sir.

Q. In that kind of a case, having done that, and allowing for the difference in earning, as I understand it he uses the multiple of three that upon the average in his judgment it would cost three times to do the local business: Now, that would be one way to figure it, to be fair, to allow for that thing?

A. I think he also had in mind his own personal knowledge of the conditions in Missouri.

1201 Q. Certainly, and any expert would say that men like Mr. Elliott, or Mr. Willard, or Mr. Harris, who actually operated the property, would be in a better position to exercise judgment about that property than anyone else: but assuming his judgment is right, as to his method, is that one way to get the full benefit of the entire revenue received, and the increase of State over inter-state business?

A. If you had no other way, you might figure it that way.

Q. He says if you ascertain it upon the ton mile basis, in the end you have to come down to using your own judgment about the extra cost of doing local business, and in that kind of a case there is more or less uncertainty about the extra amount of revenue received, in that it increases with the shortness of the haul; and, therefore, the multiple may be varying, and as a whole he puts it at six times on that basis.

A. It would not be possible to take each rate for each distance and ascertain the cost, and say if each particular rate—for instance, we will say that a man has said that the rate from St. Louis to a point 100 miles distant, on first class business, shall be so many cents per hundred pounds, and on fourth class business it shall be a less number of cents per hundred pounds. Now it would not be possible to make a calculation based upon the cost of doing the business
1202 to determine whether the relation between those two rates was strictly mathematically correct.

Q. Assuming now that Mr. Elliott's judgment in that particular case actually represented the extra cost of doing the work, and that was a fixed factor, the result would be the same whichever way you figured it, wouldn't it?

A. I have done all my figuring on the basis of tons and ton miles, and in order to form a judgment as to the relation of cost to revenue I would want to be familiar with the revenue conditions in Missouri, to give an opinion.

Q. Now, take a haul, for instance, clear across the State, from Kansas City to St. Louis, that would be practically on the same basis as the inter-state haul, going clear out to another State?

A. Yes, sir.

Q. To haul it at a distance of 25 miles, probably you would get proportionately more revenue than for the other?

A. The longer the haul the lower your rate per unit.

Q. And the shorter your haul the higher the rate?

A. Yes. And the principal element in determining that, in making rates on a scientific basis—I do not say the only element, but the principal one, would be to determine the expense.

Q. Now what figure does the shorter haul cut? As I understand you, you say you make up for the short hauls of 25 miles,
1203 the expense of doing that increases in proportion as the revenue increases?

A. The principal increase is that matter of terminal expense.

Q. In the question of these short hauls?

A. Yes, sir, in short hauls and long hauls, that is the principal expense. You get your goods, load them into the car, and start

your car. Now, the car is running. It does not necessarily make any difference whether you carry it a hundred miles or two hundred miles, for the running expenses per ton or per hundred pounds, until you strike a point where you have got to do some switching, or run into a terminal expense again. Of course, there may be matters of topography, if you run through a tunnel in one case or over a prairie country in another case; or there may be questions of climate or seasons; you may be running over green fields, or over a snow bank. Things of that kind may enter into it. But so far as the general question of rates is concerned, the principal things that affect it as between the long and the short haul is the question of the terminal expense.

Q. Doesn't the question of the long and the short haul affect it, and the filling of the car to its full capacity?

A. Certainly.

Q. The long haul practically means every ton of freight?

A. Yes, sir, and that is where my calculation comes in,
1204 in the comparison of the local and through freight trains. With the local trains you have to stop and be switching, and opening the car and putting in or taking out freight. I remarked that in my test I made by having the men go on the trains and take account of every pound taken in and out of the cars at the different stations.

Q. You don't think you would want to venture an opinion, not knowing anything about Missouri, as between strictly State business, and that portion of the inter-state business which is done partly in Missouri and partly in another State, that freight either starting from or ending there?

A. I would not want to reduce it to a statement of figures or ratios. I am quite satisfied—I know, for instance, there is an additional terminal expense where it is purely State business.

Q. I understand you object to it, and that your figure applies to this 60% of the business, but if you could give us an opinion as to the other, it might help to enlighten us. There is about 30% of that business of that kind, that which starts in the State and goes to a point beyond the State, or which comes into the State from a point outside of it, that is inter-state business.

A. The terminal expense is a very grave feature. Take the terminal expense alone, in one of my examples, and it is between 26 and 27 times as much for local business as for through business.

1205 Q. What was this you said about the Inter-state Commerce Commission, or in connection with that, in answer to some question that Mr. Kennish asked, as to creating a fund to meet ordinary wear and tear, where the instrumentality is not absolutely destroyed?

A. That is simply a personal opinion. It is not an official opinion. But I think, as good business judgment, the railroad companies ought to provide for the depreciation of their property. It was brought out by the question the gentleman asked me as to charging 60% depreciation on locomotives. I understand that my state-

ment was shown to a gentleman in Chicago and he exclaimed that my depreciation was fixed entirely too low.

Q. What is the depreciation fixed by the railroads?

A. Master Carbuilder's Rules fix it at 6%. That assumes that all the cars in the country will last 16 years.

Q. You think the depreciation is higher than that?

A. Even where they are not worn out, for other reasons they get so it is not economical to use them, and they are "scrapped," and broken up. And it is the same way with the locomotives. I have gone over the locomotives of the Northern Pacific, and there are very few locomotives in the list that are over 16 years in the service. We have had to set aside, I should say, nearly 200 locomotives since I have been with the company, as not being economical to run. They were in very good condition, but for
1206 modern, economical service, they would be wasteful, and they were set aside, and we sold them for little above "scrap" to small roads; some were broken up, and some were set aside. They are simply not in the running, because they are outclassed, as the expression is. Six per cent depreciation is none too high.

Q. In figuring up such a statement as you figure there (indicating statement), and gave in the Minnesota case, is it necessary to figure separately the gross ton miles as well as the net ton mile?

A. It would have to be done, to make my calculations. I would not make a scientific calculation, one I would be willing to put my name to, without the net ton mile.

Q. That statement was not gotten up necessarily with the idea that that was the operating expense?

A. I was building up the relative cost of handling and moving, without any attempt, as I have tried to state, of carrying it through to its final issue.

The MASTER:

Q. You had data from which you could separate the local freight and the expense of handling and moving it, per ton per mile, from the through freight?

A. I had.

Q. But would such data be possible to get, so as to make the same separation of cost of moving and handling State freight and inter-state freight?

Mr. HAGERMAN: Especially where the divisions cross State lines indiscriminately, as they do in Missouri.

A. It would be a different proposition.

1207 Q. Would there be data from which you could make such a separation?

A. If you make provision for it you could get up a statement.

Q. Certainly, by keeping the inter-state freight separate from the State freight?

A. Yes.

Mr. HAGERMAN: We have a system down in Missouri, which has been in existence for years, by which these freight divisions cross

the State lines in every direction, without any attention being paid to it.

A. I understand that.

Q. So in the end you have to use such figures as you get, and apply them in arriving at a final judgment?

A. You can do almost anything in the way of statistics, if you have money and men to do it, and due notice in advance. But when you have to go to the past and work up these things, it is a very different proposition.

Q. Therefore, in your mind, what you must do is to take the situation actually as you find it, take your figures to compare the way and the through business, and then get some expert railroad man, who knows all about the situation in Missouri?

A. Yes, sir.

Q. Otherwise you are not going to get a judgment that is worth much?

A. Yes, sir, but it seems to me I would not dare to come
1208 before this court and present my figures, if I did not think that they would have a strong bearing.

Q. I am not applying that to you, Mr. Gray, because I can see that as applied to our case, to the strictly State business, in comparing it with the through business, they are almost parallel?

A. I think now that my figures are in the record, I am egotistical enough to think that they are worthy of interest, and patient study; not hypocritical study, but taking them by and large, in a broad way, as I say, you could put lots of pin pricks in them, but you could not drive a coach and four through them.

Recross-examination by Mr. KENNISH:

Q. Mr. Gray, in working on the ton mile basis, and applying it to the question now under consideration in this case, wouldn't it be possible to get the ton miles of the State freight, by some work and some expense, as you say, in the matter of the Missouri freight business?

A. It would be possible, yes; that is, if the accounts of the railroad company are kept in Missouri as they are kept in Minnesota.

Q. For instance, as to the State freight, we have the gross earnings of the State freight now; in order to get that we must have had access to the way bills?

A. Yes, sir, they were made up from the way bills.

Q. And by the same authority you could get the tons per
1209 mile, couldn't you?

A. You could in Minnesota.

Q. Couldn't you in Missouri?

A. I think so.

Q. So that would give you the tons per mile as to the State traffic?

A. Yes.

Q. On the inter-state traffic in Missouri we have already apportioned to Missouri the part of it that belongs to Missouri, according to the mileage on that shipment in Missouri, so it would be possible

in the same way to get the tons per mile on the inter-state business, wouldn't it?

A. Oh, it is quite possible.

Q. By taking the way bills and finding the length of track in the shipment?

A. It is quite possible to figure it out for any length of time, but it would take several men quite a length of time to figure it; but it could be done.

Mr. HAGERMAN: But to get the figures applicable to the situation——

Mr. KENNISH:

Q. What I mean is you could get the same data as to such of the inter-state business in Missouri, that you got to make your calculations upon in Minnesota?

A. If they kept their accounts and way bills as we do in Minnesota, yes.

Q. There is one question I intended to ask you, which is
1210 this: In speaking of the local business, you say that means less than carload lots in all instances?

A. In one example I have taken less than carload lots, in the case where the cost was 11½ times.

Q. That great increase in the cost of the freight business is in the way freight; isn't that a fact?

A. Yes, sir.

Q. What percentage of the way freight did you find in your test? What percentage was the way freight to the through freight?

A. I don't think I had occasion to figure that.

Q. You did not figure that?

A. No, sir.

Q. Way freight is less than carload, I understand?

A. There is one business on which I testified there, that freight shipped from St. Paul in barrels, and going to Minnesota points, under what I call the first ten classes, I found that the less than carload lots represented 7,383,092 pounds. The carloads were 3,873,161 pounds, or a little more than one-half of the less than carloads, on this class of business.

Q. What classes were you comparing there?

A. The less than carloads represented classes 1, 2, 3 and 4; and the carloads represented the fifth class and A, B, C, D and E.

Q. But you were only figuring there on the class of freight affected by the proposed rate in that case?

1211 & 1212 A. The ten classes were all affected by the proposed rates.

Q. But there were classes of carload shipments not affected by the proposed rates?

A. That was in through business. I am simply speaking now of that specific business shipped from St. Paul, in those classes.

Q. In this shipment you spoke of, where the terminal cost was 27 times, I believe?

A. The terminal cost, yes.

Q. Was that terminal cost, the cost of the terminal in St. Paul?

A. It was the cost of the terminal in St. Paul, twice.

Q. Isn't it well known, Mr. Gray, that the values placed upon the terminals in St. Paul are considered out of all reason as to the actual values?

A. It is not well known. I know there are some wild ideas about that.

Q. Didn't the courts say, in the Steenerson case, that the value was largely speculative?

A. I don't care a cent about the Steenerson case. I have no doubt there was some very wild evidence given in the Steenerson case. At the same time, I have not read the case and am not competent to answer any question about it.

Q. Didn't the Court allow two and a half times to the
1213 railroad company on the value they placed on the terminals at St. Paul?

A. I suppose that is so.

Q. And allowed four and a half to five per cent on the other values?

A. If you say so it must be so.

Q. I am asking about figure?

A. I think I saw something about that before, but that would bring up another question, why one part of the property should be worth only two and a half, and the other part three or four.

Q. Didn't the court say that after a while people would get out of the train before they got to the terminal, and cart away the freight before it gets to the terminal?

A. Even courts are not infallible. But what I do say is, that the unit of a ton of freight or a pound of freight, it costs no more per one hundred pounds of freight at the St. Paul terminal than it does at a way station. You see, as I said last night, the question of the wholesale principle comes in there. We don't put money into a freight terminal for the sake of making a display, as we might in the case of a passenger terminal. The buildings are plain, the tracks are plain, the prices we pay for the property are such as we must pay, whether we like it or not. And the wholesale principle comes in there; the value of the business is so great. When
1214 you come to think about it, my figures charge only four cents for handling and moving, and all the expense connected with 100 pounds of freight.

Q. One further question: In assuming the ton miles on your through freight, you have taken a distance of 334 miles: Were those intra-state shipments that distance?

A. That is interstate business. It is an average of all our business, in other words, for the year.

Q. You were only figuring on the through business in Minnesota, I understood.

A. We were figuring on the trains that run on those divisions, but those same trains after they leave those divisions, run on, to the Pacific Coast.

Q. So you did figure on the freight hauled outside of the limits of the State?

A. We did not go beyond, and follow the trains out to their destination at the Pacific Coast.

Q. How far did you follow them outside the State?

A. To the city of Fargo, across the Red River, on the State line.

Q. Is that the distance of the road in Minnesota?

A. 250 miles.

Q. We got your figure wrong then, we have it 334 miles.

A. The 334 miles is the figure I used in charging up the through business with its proportion of the expense, because that was an ascertained average that we could work to. Of course, if I
1215 had a long time I would have tried to ascertain what the actual average haul was.

Redirect examination by Mr. HAGERMAN:

Q. There is one thing I don't understand, and which I would like to understand: As I understood you, in answer to the Master, it would be an impossibility, unless you arranged to keep your accounts accordingly, to get up a statement of the situation in Missouri, upon a ton mile basis, figured out as you have done, as between local and inter-state business; and then Mr. Kennish asked you whether you could not ascertain the ton miles from the way bills, which left at least an inference on his part that you were saying something different than you did to the Master's question?

A. I think the Master's question was different.

Q. How did you intend to answer it, is all I want to know?

(Question referred to is read.)

A. That involves the question of certain expenses, more than the question of merely mileage.

Q. I asked you so you could explain the two statements.

A. You cannot go to any way bills and get expenses. That would be a good deal more of a proposition. Of course, when I say "expense" it applies only to certain expenses; you could not get it for all expenses. But on an individual train you can get
1216 the labor, find out what they pay the engineer and fireman and the trainmen, and how much fuel was used on making a certain run, and so on.

Q. So, when you answered Mr. Kennish, that if you go back and look through all the way bills and get your tonnage, that included only one element?

A. Yes, sir, you can get the ton miles.

Recross-examination by Mr. KENNISH:

Q. You could get the same data as in Minnesota, you could get the ton miles? I understood your answer before to that effect?

A. Yes, sir, you could get the tons one mile. That is, if they keep their accounts in the same way as we do in Minnesota.

Redirect examination by Mr. HAGERMAN:

Q. Would that be net or gross tonnage?
A. That would be gross tonnage.
Q. How would you get the gross tonnage?
A. From the conductors' reports.
Q. From the conductors' reports, can you get the separation of the gross tons of the State and the interstate business?
A. I think I could, with a great deal of expense, but it would mean a very great deal of expense.

1217 Q. It would be pretty nearly practically impossible, without keeping account of it for the future?
A. I would probably have to arrange to keep it so for the future.
Q. In order to arrive at that?
A. Yes, sir, it would be a very complicated thing.

The usual hour for recess having arrived, recess was here taken until two o'clock P. M.

1218 After recess on Thursday, October 25, 1906, the following proceedings were had:

J. S. STUART, a witness of lawful age, being duly produced, sworn and examined in behalf of the Burlington Railway Company, testified as follows:

Direct examination.

By Mr. FRANK HAGERMAN:

Q. Please state your name.
A. J. S. Stuart.
Q. Where do you reside?
A. New York City.
Q. Your present position is what?
A. General Manager of the Erie Railroad.
Q. How long have you been in that position?
A. Three years.
Q. Give in a general way your railroad experience in the positions you have held in the service, just in a general way, so the court may know what you have done in that line.
A. I have been in continuous railroad service for 31 years, employed on the Central Railroad of New Jersey, the Chicago and Northwestern Railroad System, the Baltimore & Ohio, and the Erie Railroad up to the present time. During that period I occupied the positions of messenger boy, telegraph operator, train dispatcher, train master, division superintendent, general superintendent, general superintendent of transportation, and general manager.

1219 Q. Are you familiar in a general way with the difference in cost between doing the local and the through business, and the State and inter-state business of railroads?
A. Yes, sir.
Q. In Missouri there are three classes of freight business done

by the Burlington Railroad: First, that business which originates outside of the State and passes through, going to some other State. I might call that through inter-state business. Then there is a class of inter-state freight business which originates outside the State of Missouri, crosses the line and stops in Missouri; as well as the converse statement of that, business which originates in Missouri and then passes out of the State. That is a second class of inter-state business. Then there is a class of business, that with which we are dealing here, that originates and ends within the State, which we will call State traffic.

Q. Now, how much more in your judgment, would it cost to do the State traffic than the inter-state—dealing with freight business entirely now?

A. Your specification there states through inter-state, then the second class, and State business?

Q. Yes.

A. Now, state your question, based on that classification and I can answer it.

Q. Take, for instance, how much more does it cost to do the State business than the through inter-state, where the stuff

1220 does not stop at all?

A. Well, based upon my general experience I should say it costs from five to eight times more.

Q. I wish you would give the court some of the reasons you have for making that statement.

A. The reason why I say from five to eight, is because of the varying conditions which surround the operation of that. There is a great variety of things which enter into the different costs, such as the volume of traffic, and many other reasons, perhaps not necessary to enumerate, that explain the difference between five and eight. The reason why, in my opinion, it costs more, is first because the manual service on the train, the engine service, the use of cars, the small mileage that is made by the cars, the increased cost of the employees who are necessarily employed to check, receive, and care for that class of freight that is loaded and unloaded in the State. There is a large increase in track facilities necessary for that class of business. So that summing it all up in railroad terms, I should say the features of conducting transportation, the features of maintaining the equipment, and the features of maintaining the way, buildings, yard tracks, and all that, would all come in on those three railroad terms.

Q. And your estimate of from five to eight would vary accordingly, dependent on local conditions and the value of the business?

A. Altogether.

1221 Q. What would you say as to the additional cost on that second class of inter-state business which I gave you, where it either originates in Missouri and goes out, or originates out and comes into Missouri?

A. It is rather difficult to separate that from what you call "State" business. But there is a difference in the cost. In answering your

question I should say, from my experience, that it is not less than twice as great.

Q. You would fix that as the minimum, anyway?

A. Yes, sir, the minimum.

Q. Give us some of your reasons why there is that difference?

A. The reason there is a difference is because that traffic to some extent is loaded and unloaded within the State, which brings with it the necessary expense of handling it. Then it is broken up in the yards. The fuel expenses are large; the damage to equipments is large. In the operation of a train across the State there are many times, perhaps ninety-five per cent of the time a train will go clear through the State there will be no uncoupling, and no damage to the equipment. There is more proportion of damage to equipment which occurs in the yards. Everytime you put a train in the yard and break it up you create damage. And the per cent of injuries to men engaged in yard service, the switch tenders, yard masters and clerks and all paraphernalia that belongs to large yards,
1222 all belongs to that so-called second class of service. The real estate, track expenses, offices and buildings for employees, and in general all the paraphernalia that goes with that business.

Cross-examination by Mr. KENNISH:

Q. You are speaking of that cost going with the second class of inter-state business, as I understood you, as compared with through inter-state business?

A. This last inquiry?

Q. Yes.

A. Yes, Mr. Hagerman classified the through freight, second class, and State freight.

Mr. HAGERMAN:

Q. You mean by "second class" the second classification I gave you of inter-state freight?

A. Yes.

The MASTER:

Q. Which includes the transportation into or out of the State?

A. Yes.

Mr. KENNISH:

Q. And when you are enumerating the elements that go to make up the elements of additional cost, such as damage in the yards, and personal injuries, and damage to equipment, that would apply to the second class of inter-state freight, and not to the first class?

A. Yes.

Q. But that would give no reason for apportioning any
1223 higher cost to the second class of inter-state freight than to the intra-state traffic?

Mr. HAGERMAN: You mean State freight, when you say intra-state?

Mr. KENNISH: Yes.

A. As I understand it, the question is whether I would consider the second class any higher than the State class cost.

Q. Yes.

A. No sir, I said about twice for the second class as against through, and from six to eight on the State traffic as against through.

Q. That is, the second class of inter-state freight, you would say would be about twice that of the State traffic?

A. No, sir. Not as I have those terms before me. Perhaps Mr. Hagerman did not make it clear to the gentleman.

Mr. HAGERMAN: Make it plain now, what you mean.

Mr. KENNISH: I will examine him upon the question.

Q. Take the first class of inter-state freight referred to by Mr. Hagerman: Was that freight which passed entirely through the State?

A. Yes, sir.

Q. What do you say as to the additional cost of that freight compared with State freight?

A. I said, as I understood it, just the reverse: The traffic
1224 passing entirely through the State was the cheaper traffic. Now the second class, which originates outside the State and ends in the State, or vice versa, I said would cost twice as much as that through business. And that the purely State freight would cost from six to eight times more than the through business.

Q. And how much more than the second class of inter-state business, or would it cost any more?

A. Yes, it would cost more.

Q. Those items you have spoken of as showing an increased cost for second class of inter-state freight as compared with the first class, there would be very little difference between the second class of inter-state freight, and State freight, upon those items?

A. I should think there would be,—not entirely. From my experience in that sort of operation, of course I don't know anything about Missouri, or what the conditions are there, but from my own experience the purely State traffic requires a great deal more handling, and there is a greater quantity of freight continually broken up in the purely State traffic, as against the traffic that originates outside the State and ends in the State. It requires more terminal facilities, and it is moved with less speed, there is greater delay, and a greater amount of handling. That has been my experience, and that is the reason why I say the cost would be greater.

1225 Q. If you would divide intra-state traffic into through and local, so that that part of the intra-state traffic which moves entirely between—across from one division to another, or further than that, there would be very little difference in the expense of doing the business of that kind of freight, and the second class of inter-state freight you have spoken of, would there?

A. That is not clear to me.

Q. Suppose that the State traffic, or we will call it "intra-state" traffic——

The MASTER: Suppose you call it just "State" traffic; that means traffic beginning and ending in the State.

Mr. KENNISH: Suppose the State traffic is divided into two classes, through State traffic and local State traffic, and the through traffic would include such freight as moved between freight divisions, at least one freight division, or more: Would there be any material difference in the cost of handling that class of State traffic and the second class of inter-state traffic that you have referred to?

A. Yes, I think there would be quite a material difference. It would cost considerably more. Then as I understand your question, that particular train we will say for example, would have State traffic as well as inter-state traffic in it.

Q. It might have both and it might not.

A. And your thought is, if we could separate the traffic that was going out of the State, or that came from out of the
1226 State, from the traffic that begins and ends wholly in the State, there would not be any great difference? Is that your question?

Q. Yes. But the through traffic I spoke of would be State traffic.

A. Yes, I think there would be a material difference. I cannot say how we could analyze the operation so as to indicate that there would be any difference in that, or separate it so as to make any difference in my view of the expense.

Q. If the local traffic we refer to is such as we call way freight and freight that moves in carload lots, before reaching a freight division, that class of freight would cost much more than the through class, to which I have referred, wouldn't it?

A. I don't see how I can answer that question. I cannot get it through my mind how that could be separated and operated, so as to answer your question with any degree of intelligence, and prove my reason.

Q. Suppose we divide the traffic into that carried by local freight trains and that carried by through freight trains; suppose the through freight trains carry both State and inter-state freight, but carry it from one freight division to another, or further than that. Now, would there be much additional expense in the cost of doing that kind of traffic over the cost of doing the second class of
1227 inter-state traffic you have spoken about?

A. There would be a difference of the terminal expense.

Q. That would be all, wouldn't it?

A. It all depends on how much of it there was. It might develop into a quantity that would require an unusual method of procedure, and additional train service. If it did, then you would have all the features that apply to purely State traffic.

Q. And the kind of trains I have referred to as carrying through traffic, would carry probably a great deal of inter-state traffic, wouldn't they?

A. Well, I don't know how they would do it, there, but from my experience, that I am talking from, the through traffic would be carload freight. And the through traffic would not be, it was not

the usual practice where I come from to attach any of the State traffic to any of these through trains.

Q. That is, trains that would run entirely through the State?

A. Yes, sir.

Q. But it is customary to mix inter-state freight and State freight in carload lots, in passing through the State?

A. Yes, sir, we do that whenever we possibly can, for the purpose of lessening the expense of operating way freights.

Q. Where the State freight was carried in through trains, along with inter-state freight, for the distance of at least one freight
1228 division, there would be practically no difference in the cost of carrying the State freight in that kind of a train, as compared with the inter-state freight?

A. If you were to originate a solid train outside the State, to go to a division terminal within the State, that is the class of traffic you refer to now?

Q. That would be one part, that would be the inter-state?

A. The question is, assuming we had through traffic in that train, and carload traffic, or traffic to stop in the State, whether it would cost more in that train to move that from here to here (indicating on memorandum) than if it all originates here and stops there (indicating on memorandum); the cost of a carload of freight would be the same to get it to that destination and stop right there.

Q. Whether State or inter-state traffic?

A. Yes, sir, on that particular movement.

Q. And the main difference in the increased cost of the State traffic is because of the shorter haul of the way freight that is delivered locally at the stations that the train passes through?

A. Yes, sir, it is the condition of the time and the labor (which is time also) and the expense of rehandling and providing for its rehandling.

Q. Then the increased cost of State traffic would depend largely upon the percentage of way freight to what we would call
1229 through State freight, or carload State freight, wouldn't it?

A. Well now, it would be unfair for me to answer that question, because of my lack of knowledge of the conditions. There are the trains run in sparsely settled territories, that do not pay at all; and on certain portions of the railroad you really run at a loss. There are a lot of conditions and I would have to be familiar with the country, and the traffic, and all that, before I could answer intelligently.

Q. These roads we are speaking of are lines in the north half of Missouri, which is classed with Illinois, Iowa, Minnesota and other States that form group six, I believe.

Mr. HAGERMAN: By "group six" you mean the classification by the Inter-state Commerce Commission?

Mr. KENNISH: Yes, as divided by the Inter-state Commerce Commission.

A. I know, perhaps, that would have a bearing on the matter.

Q. The percentage of way freight that was carried in percentage to the carload freight?

A. Yes, that would make some difference, perhaps.

Q. Wouldn't it be the main item of difference?

A. I presume it would. As I understand it, though, this freight that comes on that particular train, eventually is disposed of within the State. Otherwise it would go on what you term a first class movement, right through the State.

1230 Q. But a great deal of the freight, as I understand it, moves one or two or more of what we call freight divisions, that being a distance of practically about 100 miles?

A. Yes, sir.

Q. Now, you say that the main item of cost in the increased cost of the State traffic over inter-state traffic would be largely as to the amount of way freight that was included in the State traffic, and the shortness of the haul of the State traffic?

A. Well, no, what I have to say is, that it would perhaps have a bearing, like many other conditions would have a bearing. But as to whether that would be a factor, or to what extent it would affect it, I wouldn't be able to say, without knowing all the local conditions.

Q. The way freight train stops and delivers freight at stations, and there is a great deal of cost added by reason of the loading and unloading, that does not apply in the case of carload freight: Isn't that true?

A. Yes, sir, that is correct.

Q. Carload freight is usually loaded by the shipper and unloaded by the consignee, and the railroad has no expense either in the loading or unloading: Is that correct?

A. Yes, sir, that is correct.

Q. In speaking of the class of freight that is designated as through inter-state freight, you said that one item that would enable

1231 the company to conduct that transportation more cheaply than the other would be that it did not require the trackage that the other freight required: What did you mean by that term?

A. For the through freight movement, simply passing through the State, what you would require would be the facilities necessary to move that train through the State, and the necessary employees to take care of it.

Q. What would be the difference in the employees, and the facilities required for that freight and the facilities required for the other class of which we are speaking?

A. I might illustrate, perhaps, by saying that frequently in the development of a railroad they do not have any stations; they do not have any local business for a long distance, and nothing but the main track or occasionally a passing track might be put in, solely for the purpose of having one inter-state train pass another. Now, as the towns develop, and the State develops, then other side tracks are necessary to set cars out, and do the State business; but the trackage necessary, whatever that might be, would be dependent altogether on the volume of the business. Then with that would come freight houses and the necessary employees to bill freight, clerks, station agents, and all paraphernalia of an ordinary railroad station.

Q. But the through freight would require at least the pass-
1232 ing track, as we have termed it, and it would be necessary to have stations so as to communicate with the through freights, so as to enable them to get on the passing track, wouldn't it?

A. Yes, it would be necessary to have a certain organization to move the through freights.

Q. And there would be made necessary, the coaling stations, and water tanks, and all such as that, even for the through inter-state freight?

A. Yes, sir.

Q. About how many stations would be required, say per hundred miles, for passing tracks and coaling and watering, even in the case of through inter-state freight, according to your judgment.

A. I could not answer that question without asking you another. That would all depend upon the number of trains you were going to run. That would govern, absolutely.

Q. Taking this as being in group six, which is under the Inter-state Commerce Division of the railroads?

A. For a single track railroad of 100 miles, I should say that a side track every ten miles would be sufficient for the operation of 12 to 15 trains in each direction a day.

Q. A passing track every ten miles.

A. Yes, every ten miles would be ample. Of course there are lots of railroads that haven't them as close as that.

1233 Q. Then for coaling and watering what would you say?

A. Well, the water stations are put 25 miles apart.

Q. And at every place where a passing track was made necessary, it would also be necessary to have a station and a telegraph operator?

A. Not necessarily a station. Because on the line I am with we have hundreds of telegraph operators located in a little box in a tower, where there is no station; simply to operate trains, where there is no town.

Q. An operator without a depot you think would be sufficient for that purpose?

A. Yes, if you had no State traffic on that line; assuming you had no State traffic.

Q. But when you consider the character of the country through which the lines in question pass, it would not occur that there would be an operator without a depot, as you have mentioned exists on your road?

A. When I was on the Baltimore & Ohio we had a great many miles of road where we had no towns at all, and we had that ideal condition we were discussing—we had a through State railroad.

Q. But that would not occur in group six?

A. No, sir, not at any place I know of.

Q. You said that in doing the through business it would be five to eight times less expensive than in doing the State business?

A. Yes, sir.

1234 Q. Putting it the other way, it would cost five to eight times as much to do the State business as it would to do the through inter-state business?

A. Yes, sir.

Q. Why did you make that margin, of five to eight times: Is that because of the lack of information upon which to base your estimate?

A. No, sir. It is altogether from the varying conditions that surround railroad operation. The Erie railroad hasten divisions. We have one division on which it costs us two and a half mills per ton per mile; and we have another division where it costs us six mills per ton per mile. And the road does not get as a whole quite six mills per ton per mile for all the business it does for the whole year.

Q. Not quite six?

A. Yes, sir. The great volume of traffic is what makes it possible to live. The terminals and the expenses on the six mills, makes it possible to live.

Q. You adopt the system of per ton per mile in ascertaining earnings and cost of operating on your road, do you?

A. Yes, sir.

Q. I notice that in some of these cases, and you have probably noticed the same fact, that even railroad experts differ very largely as to the increased cost of doing the State freight business as
1235 compared with the inter-state freight business, that is a fact, isn't it?

A. Yes, sir, I think it is.

Q. You are familiar with the Nebraska Rate case, as it is called?

A. No, sir, I am not.

Q. In which the question was tried and determined in the courts as to the reasonableness of the freight rates fixed by the Nebraska law?

A. No, sir, I am not familiar with it.

Q. Are you familiar with what is known as the Kentucky case recently tried before the railroad and warehouse commissioners there?

A. No, sir.

Q. Is it a fact, Mr. Stuart, that railroad experts, even those who testify for the railroads, differ all the way from 10% increased cost of the State traffic as compared with the inter-state traffic, all the way to six or seven times increased cost?

A. I don't know. The first I heard of this question was when I sat here today. I haven't read any articles about it or talked to anybody about it.

Q. Now have you been a witness in a case of this class before?

A. No, sir.

Q. But you do know there is a great difference of opinion
1236 among railroad men as to the amount of increase of cost in the doing of the two kinds of business?

A. I don't know that I do.

Q. Then as an expert on this subject you are not very familiar

with the facts that go to enable a witness to give an expert opinion, are you Mr. Stuart?

A. Yes, sir, very familiar. I am very familiar with the operation of the business.

Q. You have never been in the freight department of a railroad?

A. The traffic department?

Q. Yes.

A. No sir.

Q. Your business has been largely with the other lines of railroad?

A. Operating altogether; the cost of things.

Redirect examination.

By Mr. HAGERMAN:

Q. Manifestly there would be most of the way freight covered by what we have called State freight in our classification here: That is true, isn't it?

A. Yes, from my experience.

Q. And there is a very considerable difference between the cost of conducting a car of the way freight as distinguished from through freight, regardless of any State lines?

A. Yes, sir.

1237 Q. You spoke of something in reference to less than carload lots: Is it, or isn't it a fact, that with this way freight or State freight, the chances are there would be more proportionately of less than carload lot business than any other kind?

A. I know certain States that pass ten times the amount of carload freight through them than the States originate within themselves or handle within themselves. So that all depends.

Q. That is one of the local conditions?

A. Yes, that all depends upon conditions.

Q. You said something about the shorter haul: Is it or isn't it a fact that the cost is very largely increased by the shortness of the haul?

A. Yes, sir.

Q. Give some reasons why that is so.

Mr. KENNISH: He has given that.

Mr. HAGERMAN: Very well, I don't care to ask it again if he has.

Q. Another element adding to the cost is the delay in reaching cars, at small points out in the country.

A. The delay in getting cars? Do you mean to ask if that is a factor in the expense of doing the service?

A. Yes, in this local or way freight business, or State business?

1238 A. Yes, it certainly is an additional expense as compared with the other classes of service we have mentioned.

Q. What comparison is there to be made, in the way of distance and time, in the use of engines, as between the through and the way service?

A. A very material one. I can recall two divisions which I am familiar with, that are a little more than 100 miles long. The actual figures of the wage expense and fuel for the through freight is $50, and the actual expense for the operation of the local, State trains out of the State, is $99 and some cents, practically $100. Then it takes two more locomotives to do the way freight service than it does for the through service. Those engines are worth $25 a day. Then it is impossible to get the same amount of mileage out of those engines. The way freight engines work six days a week, I think, and they make not quite 50 miles a day. The through freight engines work every day, and they average about 122 miles a day. Then there is the operation of the cars. My estimate, based upon my knowledge of the thing, is that a freight car which now costs over $1,000 apiece, does not make to exceed an average of 10 miles a day. I think that is a high figure, based upon the delay in setting them out, picking them up, and so on. Last month we made 106 miles a day with certain cars, in the through State traffic. So you see you can make 10 times. That is how I figure that the increase is from five to eight. It depends on conditions. In some
1239 items it is twice as much, sometimes three times as much and in other cases it is ten times the expense.

Q. Now then, how about the average tonnage per car as between the way freight and the through freight?

A. The average tonnage of all the cars on the Erie per car per year, was 32 tons per car; and the average on what we call local traffic, which is State traffic, not counting carload traffic, because we have no figures combining the two, but the unloading traffic, unloaded from cars in the State, averages only four tons.

Q. As against 32 on the through traffic?

A. Yes, sir, as against 32. Now, the through, of course, was much greater than 32 tons. That was the average on all. A great volume of our through traffic was 40, 45 and some 50 tons.

Q. That is an illustration based upon your experience, showing the waste of the capacity in the cars in this local service, and that is a very important element to bring you to the conclusion you have expressed in figures here?

A. Yes, sir. A car that costs $1,000 will in some of its traffic have four tons in it, and in through traffic it is liable to have 50 tons in it. It averages not less than 32 tons, as a matter of fact.

Q. Let us take the switching expense at initial terminals in the local service as compared with the through service: Have you any observations to make upon that, in addition to anything you have said?

1240 A. Well——

Q. I will direct your attention to what I have in mind, so as to be as brief as possible about it: Does it make any difference in the estimate of that expense, the distance the car went, whether it is 20 or 100 miles?

A. Oh, yes. You have your exact terminal charge, which is applied to the general work. The greater earnings and the greater

number of miles traveled, the greater the sum of your terminal charge.

Q. The terminal charge is a fixed amount?

A. Yes, sir.

Q. And if you spread it over 20 miles the effect is one way, whereas, if you spread it over 200 miles it would be very different?

A. Oh, yes.

Q. Does that observation apply to the station labor at terminal points?

A. The increased cost?

Q. Yes.

A. Very materially. One clerk might bill a whole carload of freight from New York, to a thousand miles away, in a few minutes; and he might have four tons of freight in a local car and it would take him an hour to do all the billing.

Q. I believe you have touched upon, and if you haven't I would like to have you give your judgment as to that, as to the liability to personal injury and wreckage doing more in the local or way business than in the through service?

1241

A. A very small percentage of accidents on a railroad to equipment—I mean in the operation—result during a time when a train is moving, freight cars particularly. The greatest damage to freight equipment is occasioned in yards, in breaking up trains, switching the cars, etc.: that is when the greatest damage occurs, and the greatest injury to employees is occasioned in yards, in the switching of cars, making up and breaking up trains.

Q. Now, what have you to say as to the necessity of the construction and maintenance of additional sidetracks, facilities, platforms and things like that—and even elevators—to deal with local service as distinguished from the inter-state?

A. In the local business you must have all of those things. You must have freight station loading platforms, side tracks of all kinds, etc. to handle the business. While in the inter-state traffic purely, those would not be needed.

Q. Take for illustration in this case, Mr. Willard, I think it was, said there was something like 26% of their road construction that was never used by what we call the inter-state business. The extent of the additional facilities in that regard would be another of those matters depending very much upon local conditions.

1242

A. Yes, very much. I should say that was a very low figure he gave. I think it would be nearer 50%, that would be unnecessary, if you did a purely inter-state business. I think his figure is too low.

Q. So after all, while you gave an estimate of five to eight times, you have left it low, because of these various local conditions, of which you cannot speak, but people who are more familiar with the details must?

A. That is the reason.

Recross-examination.

By Mr. KENNISH:

Q. In speaking of freight as "local freight" and "through freight" you mean by local freight the way freight that is delivered in less than carload and received in less than carload lots, as I understand you?

A. No, sir, I should say that the State traffic should include both carload freight and less than carload freight, because it is quite difficult to separate them.

Q. It would also include what is called through freight, wouldn't it?

A. Some of that local freight might come from outside the State, or it might be picked up in the State to go outside the State.

Q. Take a shipment from St. Louis to Kansas City, entirely across the State, would you say that would be a local ship-
1243 ment?

A. I would not understand that as being called State traffic. It might be in the State train, but it ought to be in your through inter-state train, that we discussed.

Q. Couldn't it be through State traffic?

A. It might be, yes.

Q. Couldn't you speak of through traffic, as I explained before, as traffic that would go at least from one terminus of a freight division to another terminus, or beyond that: Wouldn't that be through freight?

A. If it went from one terminal to another, within the State, intact?

Q. Yes, intact.

The MASTER:

Q. If it passes over one entire division, or more?

A. Yes, that would not really be State traffic, would it?

Mr. KENNISH:

Q. You would call that through traffic?

A. Yes, sir, I would call that through traffic.

Q. Then in speaking of local traffic you did not include any inter-state traffic on that condition?

A. No, sir, I did not.

Q. You did not take into consideration the way freight that would be purely inter-state traffic, did you?

Mr. HAGERMAN: When he called it local, you mean?

Mr. KENNISH: Yes.

1244 Mr. HAGERMAN: I don't think there is any misunderstanding about that.

A. I was talking about local freight, purely, in the State.

Mr. KENNISH:

Q. Take freight of this character, say freight shipped from Chicago to St. Louis in less than carload lots, to be delivered by way

freight trains, at the stations to which it is consigned: That would not be State traffic, and it would be necessary to make all these stops and delays in the distribution of that freight that you have taken into consideration as enhancing the cost of the freight traffic alone?

A. Yes, sir, that would be in the same kind of a train we are talking about, that traffic you are talking about.

Q. But you are making your estimate that all of the freight carried in that train was local State traffic, in making the comparison as to the increased cost?

A. The delay was not specified.

Q. But as a fact you were considering that as State traffic?

A. Yes.

Q. And if there was a considerable proportion of that class of freight, it would materially change your estimate?

A. It would not change the cost of handling it in the State.

Q. No, sir. It would not change the percentage, but it would change the increased cost of what was purely State traffic.

1245 If that class of traffic was assigned to where it belonged as interstate traffic?

A. It might. That would all depend upon the volume of it.

Mr. HAGERMAN: That is what makes the lee-way necessary in his estimate.

Mr. KENNISH:

Q. If there was any of it it would affect your estimate to that extent, wouldn't it?

A. It might, but I don't believe it would make any appreciable difference in the estimate. I don't know anything about the traffic in Missouri, whether it is great or small.

Q. Whether Missouri or elsewhere, isn't it true that there is inter-state traffic carried in every freight train?

A. Yes.

Q. So it would not do to apportion the cost of the way freight train, to the State traffic, when such trains were carrying inter-state traffic?

A. The expense would be made up of handling it all. The cost would be developed by handling it all.

Q. And it would be apportioned according as to whether the freight trains were composed of State or inter-state way freight?

A. It might be. There might be some conditions when it would not. I would have to know about the locality and the character of the business to be able to say whether it would be fair ro ap-

1246 portion that cost to that traffic based upon the volume of one class of traffic to the other. I cannot answer that.

Q. Take it in the case of a way freight train passing from a commercial center just over the line in one State, and a train going into the other State, it would be inter-state business, but the freight would be nearly all inter-state freight?

A. Yes, sir.

Q. And the expense would be nearly all chargeable to inter-state and not to State traffic?

A. That might be.

Q. Isn't it frequently the case that you find the facts just as I have stated?

A. Yes, sir, I think I know of cases like that.

Q. Another item I wish you to give your opinion is, isn't it a fact that the greatly increased weight of the through freight trains and engines, and the increased rate of speed at which they travel, is an item that ought to be taken into consideration, in the damage to tracks, bridges, and such as that, over lighter trains that carry way freight and State freight?

A. The volume of traffic would of course change that cost. Many railroads use just as heavy locomotives on their way freight as on their through freight trains.

Q. That is not the case as a rule, is it?

A. Many roads do.

Q. Isn't it generally the case that they use the older and
1247 lighter engines in handling the way freight?

A. I think generally it is.

Q. Engines that would not be serviceable for these heavy trains and to go at the rate of speed that the through freights travel?

A. Not to my knowledge. They do not use an older engine that is not as efficient. On the contrary my experience has been that it is necessary to have the best type of engine on way freights, because it is so difficult to get them over the road, and it adds so materially to the cost of operation, if you don't have the best power you can. We found it necessary to reduce the size of the way freights, by reason of the nature of the work. It takes so long to get the men over the road. Therefore, it is unnecessary to put those enormous engines on, but it must be an engine that will get the traffic over the road rapidly. Therefore, that is why large engines are not used. It is a question of physical endurance with the men on our way freights.

Q. It does not take the power in handling the light, way freight that is needed in handling the through freight?

A. It must be equal to, although not so large.

Q. And the heavy engine would necessarily do more damage to the track and require stronger track rails and bridge structures and such, than the lighter engines would require?

A. To part of that I would say yes. The larger the engine
1248 the better bridge is required. But many of our larger engines are so proportioned today, so that the weight on any particular point of contact with the rail is no greater than with the smaller engine, because you have more points of contact. And the blow on the track is no greater than with the smaller engine. But, of course, when you go to both extremes, the largest and the smallest engine, there is the difference you speak of.

Q. You said that in loading a car of way freight, it might require one man's services for an hour?

A. Billing, I said, in a local car.

Q. The billing might require that? A. Yes, sir, there might be so many shipments.

Q. And how much labor would it require to do the loading?

A. Of course, as you know, it would all depend upon the commodity.

Q. Take the average load of way freight, four tons, I believe you said was the average on your road?

A. That depends on so many things. It might be wrought iron or bird cages, or it might be a lot of things that would take so many different kinds of time. I have seen a way freight train two hours at a station doing work, and I have seen that same way freight only fifteen minutes at another station. It depends so largely on the character of the commodity that they are loading and un-
1249 loading; but there is your range. I have seen them working fifteen minutes, and I have seen them take two hours, five men working constantly.

Q. Loading at the station where the whole load was put in at the point of origin of the train?

A. Sometimes it takes 20 or 30 minutes to find a box in the car.

Q. I asked you how long it took, on an average, to load a car of way freight, weighing 4,000 lbs., the way you say way freights average on your line?

A. I could not answer that instantly. It all depends upon the number of men and the character of the freight. If you could tell me what kind of freight you refer to, and the number of men, I think I could answer fairly closely on that.

Q. Take it for flour, cement or lime?

A. Well, with cement, five men on the way freight, if they all work, you could load it in an hour.

Q. You think it would take five men an hour to put four tons of freight in a way freight car?

A. Yes, sir.

Q. One other question, Mr. Stuart: Suppose a shipment of freight comes from another State into Missouri, say from Ohio, and has to be transferred after it reaches Missouri, on to another line, to be carried to its destination: which class of freight, in the divisions made by Mr. Hagerman, would you put that freight in?

1250 A. From Ohio, beyond Missouri and transferred in Missouri?

Q. Yes, after it gets to Missouri?

A. I should call that through inter-state freight, ordinarily. Of course there may be conditions there that I know nothing about.

Q. You would not put it in the class that passes entirely through the State?

A. Yes, I would.

Q. I mean such freight as would have its destination in Missouri?

A. Oh, destined to a point in Missouri?

Q. Yes.

A. As I understood the questions, as you gentlemen put them when I first sat down here, I should call that the second class of inter-state freight.

Mr. HAGERMAN:

Q. As I understand you, taking everything into consideration, much depended upon the local conditions, such as part of the way freight going on the inter-state freight trains, and so forth, and your opinion is that it costs to do what I have called strictly State business, five to eight times as much as to do that inter-state business?
A. Yes.

Mr. KENNISH:

Q. But in that increased cost of State business, you were assuming that all business done by way freight trains was State business?
1251 A. No, sir.
Q. Didn't you state that?
A. No, sir, not entirely.

Mr. HAGERMAN: That is one of the reasons you gave as the cause of the lee-way; that is what he said five to eight.

Mr. KENNISH:

Q. Didn't I ask you if you based your estimate on the supposition that all way freight that was delivered at way stations was State traffic, and didn't you say you did make your estimate on that basis?
A. Yes, I made my estimate on that, but the reason I hesitate is that sometimes they carry inter-state cars in the trains. But I did not take into account what you mentioned. I said it would be so difficult to separate that. You asked me questions about the percentage of one to the other, and the effect it would have on the entire cost, and I said it would be impossible for me, with my experience, to separate those things with intelligence and answer that part of it.
Q. But you did answer to those questions, that you considered all way freight in the estimate you made in answer to Mr. Hagerman's question, as State freight?
A. Yes, sir, I did.

Mr. HAGERMAN:

Q. And to allow for the separation of that, that is one of the things dependent upon local conditions, is why you did not fix it at five times or eight times, to allow the lee-way between?
A. Yes, sir.

1252 At this point the further hearing of testimony herein was adjourned to November 7, 1907, then to be resumed at ten o'clock in the forenoon, in the Federal Building, in Kansas City, Missouri.

1253 KANSAS CITY, MISSOURI, *November* 7, 1906.

On account of the continued illness of counsel, the further hearing of the case is adjourned, to be resumed at Kansas City, on Monday, November 12, 1906.

KANSAS CITY, MISSOURI, *November* 12, 1906.

Pursuant to adjournment, and on notice to counsel, the further hearing is resumed on this day, at Room 312 in the Federal Building, Kansas City, Missouri.

Appearances: Mr. F. L. Schofield, Special master. Messrs. O. M. Spencer and Frank Hagerman, in behalf of the Burlington Railroad Company.

Messrs. H. S. Hadley, S. B. Ladd, Rush C. Lake and John Kennish, in behalf of the State.

The following proceedings were had:

C. I. STURGIS, re-called testified as follows:

Recross-examination.

By Mr. HADLEY:

Q. There is a yard master of the Burlington Railroad Company at each division point, isn't there?

A. I believe there is one at every division point. I don't know any exception.

Q. Do you know what his records show as to the make up of through and local freight trains?

A. No, sir, I do not know. The trains are regularly numbered, as a rule; and certain numbers are understood as through trains and certain numbers as local trains. Of course, he would
1254 have certain information in regard to that. But whether he would have that information about extras, I could not tell without investigating.

Q. Take his record as to through and local freight trains, does that show the number of cars, whether loaded or empty, the place of receiving the freight, and the place of destination of the car?

A. I do not know. I am not familiar with that record.

Q. What is the record that he does keep, called?

A. That I do not know. I think the yard master's record, to make up trains, if there is such a record, would explain in a general way what it was.

Redirect examination.

By Mr. HAGERMAN:

Q. In Exhibit 1 to your testimony, you show the total diminution in revenue for the years 1904 and 1905, provided the charges had been made on certain articles as authorized by the Act of 1905: Will you get those figures before you for a moment?

A. Here is Exhibit 1: (indicated).

Q. According to your statement there would have been a total

diminution in revenue in 1904 of $173,770.44 or 32.22 per cent: Is that right?

A. The diminution for the year 1904 shown in Exhibit 1 is $173,770.44.

Q. And the percentage of reduction?

A. 32.22 per cent.

Q. That is 32 and 22/100 per cent?

1255 A. Yes, sir.

Q. For 1905 it was what?

A. $171,122.07.

Q. What percentage is that?

A. 32.49 per cent.

Q. Did you prepare a statement showing how that was made up in itemized form, upon what particular commodities?

A. Yes, sir, I have the exhibit.

Q. Will you produce that and have it marked as an exhibit?

A. It is already a part of exhibit 1.

Q. In itemized form?

A. Yes, sir, pages 3 and 4 of Exhibit 1.

Q. You were asked some questions in a general way about the outstanding mortgages and bonds on the property in Missouri: In a general way what were the names of the original lines that now constitute part of the Missouri system? The Hannibal and St. Joe is one?

A. The Hannibal and St. Joe; the Kansas City, St. Joseph and Council Bluffs; the St. Louis, Keokuk and Northwestern the Chicago, Burlington and Kansas City. I will state here, that there were some roads prior to these, that went to make up those roads.

At the time the Burlington acquired those roads, that is the way they were; also the Tarkio Valley, the Nodaway Valley, the St. Joseph and Des Moines; the Keokuk and Western; the Iowa and St. Louis.

Q. Do I understand you that all those roads, were all

1256 conveyed, the legal title to them, to the Chicago, Burlington and Quincy Railway Company? Are any of them owned or operated under the old name?

A. They are all considered a part of the Chicago, Burlington and Quincy Railway Company. I don't know that I can give you the exact legal connection between the various roads and the Burlington.

Q. What I want to get at is, is there any point of distinction between any mortgage bonds issued by the C., B. & Q., and what we call "the underlying bonds" executed by those old roads. Can you give me that?

A. As I understand it, you want to know the amount of outstanding indebtedness on mortgages applying particularly to these pieces of property?

Q. What I want to get is the underlying mortgages upon those properties before they were acquired by the Burlington Railroad what we would call the underlying mortgages. Take for instance the Hannibal and St. Joe?

A. The Hannibal and St. Joseph has bonds on a mortgage amounting to Eight Million Dollars on June 30, 1906.

Q. That is the Hannibal and St. Joe mortgage?

A. Yes, sir.

Q. Take the Kansas City, St. Joseph and Council Bluffs?

A. That mortgage is $5,000,000.

Q. And the Tarkio Valley?

A. $144,000.

Q. And the Nodaway Valley?

A. $128,000.

1257 Q. Now on the other lines in Missouri there are no underlying mortgages, that is, mortgages in existence executed by the original Companies?

A. When this question was up before the bonds already mentioned were mentioned, at that time I did not mention the St. Joseph and Des Moines, which still has outstanding $960,480.00 of the bonds, which are an underlying security to the C., B. & Q., Iowa division mortgage bonds of 1919. There is also underlying that same Iowa mortgage, Leon, Mt. Air and Southwestern Company bonds, amounting to $1,112,000.00.

Q. What name did that road ultimately take in that Division of constituent Companies you gave us?

A. It should have been added to that list.

Q. Between what points in Missouri does that branch run?

A. I am not sure how much of that is in the State of Missouri. I think only a few miles. It is a part of the line running from St. Joe to our main line at Chariton. There was an old narrow gauge running up to St. Joe and then there was the Leon, Mt. Air and Southwestern.

Q. Does that cover all the underlying mortgages of the constituent Companies, now outstanding upon any of the roads in Missouri?

A. Yes, sir.

Q. From time to time the mortgage bonds have been retired upon these different lines upon the C., B. & Q. system, have they?

A. Yes, sir.

Q. And in what form do the bonds now stand that are outstanding, in addition to what we call the underlying mortgages,

1258 on some constituent company? In other words, what C., B. & Q. Railway Company bonds are outstanding? You need not at this time give it in detail, but are there quite a number outstanding, some of which have specific mortgage security and some of which are general obligations of the Company?

A. My recollection is that the list of bonds outstanding on June 30th, 1906, is already a part of the record.

Q. What I am getting at is, there are independent of the underlying mortgages of the constituent roads in the C., B. & Q. system, practically $141,000,000 of bonds of the C., B. & Q. Company outstanding?

A. Independently of the Missouri roads?

Q. Independently, not only of Missouri but the constituent mortgages, like the B. and M.——

Mr. HADLEY: Mr. Fisher tells me that he and Mr. Sturgis have agreed upon those figures and there will be no dispute about it.

Mr. HAGERMAN:

Q. The question is whether there are outstanding a number of C., B. & Q. bonds, part of which are the general obligations of the Company with no specific mortgage security, and part of which is secured on certain divisions of the road?

A. There are.

Q. Will you produce a statement of that outstanding bonded indebtedness as part of your testimony?

A. Yes, sir. (Witness here produces paper.)

Q. That, I understand, is the paper that you and Mr.
1259 Fisher checked up?

A. Yes, sir.

The paper referred to is marked "Complainant's Exhibit 10". Said paper is in the words and figures following, to-wit:

"Bonds Outstanding June 30, 1906.

June 30, 1906.

C. B. & Q.	5's	of 1913	9,000,000.00	
" Ia. Div.	5's	of 1919	2,329,000.00	
" " "	4's	of 1919	7,712,000.00	
"	4's	of 1921	4,300,000.00	
"	4's	of 1922	7,968,000.00	
" Neb. Ext.	4's	of 1927	24,791,000.00	
" Ill. Div.	3½'s	of 1949	50,835,000.00	
" " "	4's	of 1949	34,165,000.00	
				141,100,000.00
B.M.Neb.Cons.M'tg'e	6's	of 1918	13,650,000.00	
" " " "	4's	of 1910	3,347,000.00	
Rep. Valley R. R.	6's	of 1919	1,078,000.00	
				18,075,000.00
H. & St. J. R. R.	6's	of 1911	8,000,000.00	
K.C.St.J.& C.B.R.R.	7's	of 1907	5,000,000.00	
Tarkio Valley R. R.	7's	of 1920	144,000.00	
Nodaway Valley "	7's	of 1920	128,000.00	
				13,272,000.00
Atch. & Nebr. R. R.	7's	of 1908	1,125,000.00	
Line&No.West.R.R.	7's	of 1910	600,000.00	
				1,725,000.00
				174,172,000.00"

1260 Q. The total amount of the C., B. & Q. Railroad Company bonds, on the system direct, is $141,100,000.: Is that right?

A. Those are bonds known as "C., B. & Q.": Those are not the whole actually on the system.

Q. In addition to those of the constituent companies in Missouri that you have mentioned, there are in this list mortgages of the B. M. Neb., the Republic Valley, the Atchison Lincoln & Northwestern: those are the names of constituent companies in Nebraska?

A. Yes, sir.

Q. What is the total bonded indebtedness outstanding?

A. $174,172,000.00.

The MASTER:

Q. That $174,172,000. includes the underlying mortgages of the constituent companies and also on the C., B. & Q. proper?

A. Yes, sir.

Mr. HAGERMAN:

Q. Now Mr. Sturgis there were some questions asked by counsel for the state in regard to certain charges that were made in the maintenance and repair fund, which some of the lawyers or some witness called "arbitrary charges to replacement fund", we used that name I believe: Have you itemized that statement?

A. Yes, sir, I have an itemized statement of that.

Q. That has been checked up by you and the state's expert has it?

A. Yes, sir.

1261 The MASTER: For convenience of reference I wish you would refer to item 1 of Exhibit 1, to which this question has reference.

Mr. HAGERMAN: Under the item of expense of maintenance of equipment, and maintenance of road and structures, there were certain items spoken of during the examination, and I think somebody for the purpose of designating it called it, "Arbitrary Charges to Replacement Fund": Now this statement (indicating) is an itemized statement of all the items that go to make up the statement of Mr. Sturgis.

Here is the statement, has it been checked over by you and the state's expert?

A. (after examining statement.) That is correct.

The statement referred to is marked "Complainant's Exhibit 11". Said statement is in the words and figures following to-wit:

1262 Q. Have you a statement prepared as to the basis of the assessment of the State Board of Equalization in Missouri?

A. The assessment by the State Board for the year 1905 for Missouri amounted to $13,470,361.10.

Q. Have you the figures for 1904?

A. No, sir, I have not.

Q. Do you know upon what basis they assess, whether two and one-half, three or four times the value?

A. I do not. I have nothing whatever to do with the assessment proper.

Gen'l HADLEY: I think I can supply it for you in a moment.

Mr. HAGERMAN:

Q. What is the portion of the system known as the old Monroe and Mexico line, Mr. Sturgis?

A. It is a piece of line built from Old Monroe due west to Francis.

Q. Old Monroe was a point on the St. Louis, Keokuk & Northwestern?

A. Yes, sir. A comparatively short distance above St. Louis.

Q. Where is Francis?

A. It is approximately near the middle of the State, a junction with the Alton road.

Q. Near what place?

A. Near Mexico.

Q. You may state when that road was constructed, if you remember?

1263 A. My recollection is it was begun in 1904. It was practically built in 1904 and 1905.

Q. At the request of the state, did you prepare some figures showing the cost of that construction?

A. Yes, sir.

Q. What was the result of it?

A. The actual cost to July 31, 1906 was $2,874,804.93. At that time we made an estimate of the cost to complete it of $28,121.02. That was made up by our engineers. Making the total cost $2,902,925.95.

Q. How many miles of main track?

A. 63.29.

Q. And the average cost per mile was what?

A. That figures $45,867.05.

Q. Do these figures include anything for terminals, and if not, why?

A. No, sir. I think I am safe in saying there is no terminal expense in that. The real terminal on the west end is Mexico. That is the property of the Alton road. On the east end it merely leaves our main line where we formerly had a station.

Q. The purpose of building that line was to make a short line, which was to be jointly owned by the Burlington and the Alton: the Alton owning from Francis into Kansas City, and the Burlington owning from Francis down to St. Louis?

A. That is substantially correct.

Q. That would make it a short line from St. Louis to Kansas City, on the various roads?

1264 A. My understanding is that there is a joint understanding as to the road between Francis and Mexico.

Q. What I was getting at is, that is really one of the trunk lines of the State?

A. Yes, sir, that is right.

Q. What, if any equipment, is included in that statement?

A. No equipment other than the equipment used on the track, particularly hand cars and things of that kind. No operating equipment for conducting business.

Q. Have you prepared a statement to show what the fair cost of equipment per mile is, or could you give me some idea of about what it would be?

A. We haven't got for the road the actual cost of the equipment,—I mean for the Burlington as a whole. In cases where we had acquired other roads, we have paid so much for the road including the equipment. That is what it costs us to purchase their stocks and bonds; and there was no division between the cost of the equipment and the cost of the road; therefore, we do not know and have no means of telling what the actual cost of the equipment of the road as a whole is. But taking the amount of equipment we have and figuring on the cost of equipment in a very general way I should say that east of the Missouri River it should not be less than Eight or Ten Thousand Dollars a mile and perhaps considerably more. I should want to revise that figure before I give it permanently.

Q. You say east of the River; Is there any difference between east and west of the River?

A. Yes, sir; because it depends upon the density of the
1265 traffic.

Q. I thought you were drawing the Mississippi as the line and that you meant west of that?

A. No, sir, I said the Missouri River.

Q. Eight to Ten Thousand Dollars a mile you think would be a fair estimate?

A. Yes, sir. That is a very hasty opinion. I would not like to give that as an expert opinion without a better opportunity for figuring it over.

Q. You have acquired a good many large terminals in the large cities, St. Louis, Kansas City, Burlington and St. Joseph, as well as in the smaller places like Hannibal, Brookfield and places like that?

A. Yes, sir.

Q. Do you know what the cost of those terminals were, per mile, independent of the main line, for the State of Missouri?

A. No, sir, I could not tell you.

Q. Could you give us that information?

A. No, sir, I haven't any way of making it up. The cost of the St. Louis terminal, such as we built, when we entered there, we have and we could give the figure at that time. We have been to considerable expense since then, which has not been kept separate in our books. The other terminals we acquired with the different roads. For instance, when we bought the Hannibal and St. Joe, we bought considerable terminals with that road.

Q. From time to time you add to the terminals in these
1266 cities?

A. Yes, sir, all the time.

Q. Within a few years property has been bought for that purpose here in Kansas City?

A. Yes, sir, a very large amount.

Q. If you have not your books so you can speak accurately on the subject I want an estimate of about what it would cost per mile to acquire terminals in these cities, over and above and in addition to the cost of construction?

A. I haven't any idea.

Q. Could you compile a statement and hand it to the stenographer at some future time?

A. I think after consultation with our engineers I could get a general figure.

Q. Just get us a minimum amount?

A. I will endeavor to do so.

Mr. LADD: If any statement of that kind is handed to the stenographer, we may wish to ask Mr. Sturgis about it.

Mr. HAGERMAN: I meant, of course, that you would have a copy of it.

The MASTER: If many of these terminals were acquired at the same time the constituent company was acquired, I don't see how it would be possible to fix a separate value on the terminals.

Mr. HAGERMAN: I want him to look at his books and see what he can do about it. There has been property acquired comparatively recently in Kansas City and St. Louis. It is very difficult
1267 to get at it when they have acquired an old road. Anyway, the terminals are made up of a purchase of a lot today and of another next year, as the business grows in the State.

I believe that is all I wish to ask Mr. Sturgis now. I understood that I had asked Mr. Sturgis to give us the best information he could get, but he did not have it on his list as one of the things to look up; otherwise, we would have had here today whatever he found.

Mr. LADD: Mr. Hagerman, when you spoke of terminals just now, did you mean all stations?

Mr. HAGERMAN: No, sir, I only spoke of the large terminals.

Mr. LADD: Because one of the witnesses has said that every station was a terminal.

Mr. HAGERMAN: I had in mind only the large places. There is Hannibal, which is a place of importance in that it is a division point; then there is Kansas City, St. Joe and St. Louis. Something that would show comparatively recent acquisitions of terminals there, which would give us some idea of the cost. Whatever Mr. Sturgis finds he will hand a copy to you, and if you want anything more you can so state.

Cross-examination.

By Mr. H. S. HADLEY:

Q. You have testified as to the assessment made by the State Board of Equalization on the Burlington property in 1905 for the State of Missouri, being $13,470,361; do you know if that
1268 includes an assessment for what is called the Franchise value?

A. No, sir, I don't know it.

Q. Do you know that it also includes an assessment against the

Burlington for its Pullman cars or Pullman cars that are operated on its system, which are not really owned by the Burlington Company?

A. As I said I had nothing to do with making up the assessment, and merely quoted the total figure.

Q. You know from your records what the assessment was without knowing how it was made up?

A. That is right.

Q. Your road has never undertaken, in answer to the request of the State Board of Equalization, for a statement of the cash value for each branch line in the State of Missouri, to give to the State any statement upon that point?

A. Not to my knowledge.

Q. I find in the records of the State Board of Equalization, in answer to that question, in the years 1904 and 1905, propounded to each of the constituent companies and also to the Chicago, Burlington and Quincy Railroad Company, that you made the answer "Impossible to state. Any estimate would be a mere conjecture"; was that answer prepared as the result of your investigation, or was it prepared under your direction?

A. If that answer was made, it was made without my knowledge at the time, because I had nothing to do with it. As a matter of opinion, I believe it is a very true answer.

Q. Then although you have not been asked, as General
1269 Auditor of the Burlington system to prepare any statement or make any estimate as to the actual cash value of your property in the State of Missouri, you think to state that it would be impossible to determine it, would be correct?

A. That is my belief.

Q. You were asked by Mr. Hagerman as to these separate items which constitute the entire estimated decrease of revenue which would be occasioned by the Act of 1905, and in those items as shown on page 3, of Exhibit 1, live stock makes up $147,748.74 of the total decrease in earnings as estimated by yourself of $173,770, doesn't it?

A. Yes, sir.

Q. And your estimated decrease in earnings upon live stock was 30.55 per cent in 1904?

A. Yes, sir.

Q. And in 1905 the estimated decrease in live stock was $140,-302.64, being an estimated decrease in revenue of 37.57 per cent: those figures are correct?

A. Yes, sir.

Q. In other words about three fourths of the estimated decrease would be occasioned by the live stock rate?

A. I don't think that follows. I don't think you have read the figures correctly, if I understand you.

Q. You correct me if I made a mistake.

A. Oh, you are not referring to the per cent but the actual decrease?

Q. Yes.

A. In both cases it is approximately three fourths, very
1270 roughly, of the total decrease.

Q. That is my estimate. You may figure it exactly if you wish.

The MASTER: That is to say, three fourths of the decrease of revenue, which would have been occasioned in pursuance of the Act now in question, would have arisen from the decrease in rates on live stock?

Mr. HADLEY: Yes, sir.

Mr. HAGERMAN: You will observe that the revenue from live stock is a large percentage?

Mr. HADLEY:

Q. How much in the diminution of gross revenue shown by your Exhibit 1, pages 3 and 4, would have been sustained in 1904 and 1905, had the rates fixed by the Act of 1905, been observed, was due to shipment of live stock into Kansas City and how much to shipment of live stock out of Kansas City?

A. I haven't that figure. You mean to split up this $147,000 between in and out of Kansas City?

Q. No, I mean did you compute in arriving at that estimated decrease in revenue, shipments of live stock into Kansas City and shipments of live stock out of Kansas City?

A. I don't know whether we did or not. I should have to ask those who made up the detail of that figure. I cannot tell you whether they actually did or actually did not.

Q. Have you any record which would show as to whether that estimated decrease in revenue, on account of the live stock rate, was figured upon the basis of live stock coming into Kansas City
1271 or on basis of live stock going out of Kansas City Stock Yards?

A. We could undoubtedly ascertain from the parties who made up the statements as to whether it was or was not.

Q. Do you know now who that was?

A. I know who had charge of the work and I could easily get that information for you.

Q. Isn't it a fact that every car, which does come into the Kansas City Stock Yards, over the Burlington system goes into the State of Kansas; and does not every car coming from the Kansas City Stock Yards either originate in or pass through the State of Kansas in getting into the State of Missouri?

A. That is purely a geographical question?

Q. Don't you know that to be a fact?

A. No, sir, I don't know it to be a fact. I haven't looked it up.

The MASTER: That is, shipments of stock into Kansas City, from Missouri, would pass through the State of Kansas, to get into the stock yards?

Gen'l HADLEY: Yes, sir. And the converse is also true.

Mr. HAGERMAN: I don't think it is true as a matter of fact.

Gen'l HADLEY: I will ask the question.

Q. You so understand it?

A. I want to state in explanation of my answer, I recall now that question was brought up, whether the stock yards in Kansas City were actually in the State of Kansas or in the State of Mis-
1272 souri. I don't think it has ever occurred to us—As I say, I don't know, how these figures were made up but I can ascertain—whether the stock yards are in Kansas or in Missouri; whether our Auditor understood it.

Q. Your idea was that live stock coming into or going out of Kansas City was Missouri business?

A. Yes, sir.

Q. And your idea is, that decrease includes it?

Mr. HAGERMAN: The Courts have already determined whether they do or not, it is not interstate commerce.

The MASTER: That is to say, a shipment of stock from some point in Missouri, into the Stock Yards in Kansas City, even though it incidentally passes through a small part of the State of Kansas, that does not constitute an interstate shipment?

Mr. HAGERMAN: Judge Thayer decided that in the Cottingham case.

Mr. HADLEY: There is a conflict of opinion upon that.

Mr. HAGERMAN: The fact that the State Line runs through the stock yards, and that the cattle go on one side or the other.

The MASTER: Whether the stock yards itself is upon the line?

Mr. HAGERMAN: The State Line runs through the stock yards. The offices are partly in one state and partly in another. The Stock Yards claim that because that line ran through there, that stock that came in was interstate and not state traffic.

1273 The MASTER: Predicating the question I propounded a moment ago, upon my understanding of Gen'l Hadley's question, it was a little different from that: Suppose the Kansas City Stock Yards are in the State of Missouri, and to reach them a shipment will incidentally pass through the State of Kansas: Will that constitute that shipment interstate commerce?

Mr. HAGERMAN: That is not in the case.

Gen'l HADLEY: Do you concede the right of the State to regulate the rates, whether the shipment originates in Kansas City or ends in Kansas?

Mr. HAGERMAN: I simply want to call attention to what the courts have decided upon the point.

Gen'l HADLEY: I — simply asking these questions so the facts will be gotten into the record.

Mr. HAGERMAN: I would suggest that you get them from some one who knows more about it.

Mr. HADLEY:

Q. Will you furnish that statement I have asked for?

A. Whether it was or was not treated as State business?

A. Yes.

A. Live stock coming from or to a Missouri point, and to or from the Kansas City Stock Yards?

Q. Yes, or the converse. We can determine the geographical facts and argue the question of law.

The MASTER: What you want to know is, whether these items on pages 3 and 4, of Exhibit 1, referring to live stock, include all shipments of stock, whether from Missouri or some other State,
1274 which went into the Stock Yards at Kansas City.

Gen'l HADLEY: Not from any other State. Shipments from Kansas City into the State of Missouri, although they originated in a part of the Kansas City Stock Yards, located in the State of Kansas.

The WITNESS: I think very likely your expert can state that positively because he followed the work and detail of it where I did not.

Gen'l HADLEY: Mr. Fisher says they did count all of that as State business.

Mr. FISHER: They did not consider the fact that the state line ran through the stock yards in Kansas City.

Gen'l HADLEY:

Q. Would your records enable you to show what part of the decrease on the live stock business was by reason of the Kansas City Stock Yards in or out?

A. Probably not.

Q. Was any part of the estimated decrease shown on pages 3 and 4, of Exhibit 1, figured upon live stock shipments, going to the National Stock Yards at East St. Louis?

A. No, sir.

Q. Was any part of the estimated decrease figured on any business which went across the Mississippi River, and upon which bridge tolls were allowed?

A. No, sir. That would have made it interstate business?

Q. Was any of that estimated decrease in the revenue of the Company from live stock shipments sustained by reason of shipments of what are known as "Stock Cattle," estimating that decrease upon 75 per cent of the rate upon stock coming into
1275 the Stock Yards?

A. I don't understand your question. I hear it but I do not know what you mean by the distinction.

Q. Perhaps you don't know about the proposition, that what are known as "Stock cattle" shipped out of the Stock Yards to be fed upon the farms in Missouri, usually take 75 per cent of the rate on fat cattle coming into the market to be sold?

A. No, sir, I don't know that fact.

Q. The distinction is between "Feeders" and fat stock cattle. Can you determine as to whether any part of the estimated decrease is figured upon a 75 per cent basis of the rates fixed by the Act of 1905 upon such shipments out of the Stock Yards in Kansas City and St. Joe?

A. No, sir, I can't tell you that without looking it up.

Q. You can do that, can you?

A. Yes, sir.

Q. You know, as a matter of fact, from the Act itself, that no such distinction is made between fat cattle and feeders?

A. That I believe to be correct.

Q. Have you had occasion to know whether live stock shipments are handled by through or local freight trains?

A. As a general thing they may be handled on either class of train?

Q. Have you had occasion to investigate and inform yourself on that point?

A. I know, as a matter of fact, they pick up cars of stock on local trains frequently.

1276 Q. As a general proposition though, practically all of the live stock business is handled in a way which would make the method of handling practically similar to through freight trains, wouldn't it?

A. The tendency, as I understand the operating practice is to bunch the stock as far as possible.

Q. That is, when there is live stock to come to a stock market, to get as many cars as possible, in order to make a through train of it?

A. To get as many cars as possible together, so as to bunch them and run them together.

Q. You have testified that the amount apportioned to Missouri on express, was divided between state and interstate earnings, on the basis of earnings upon freight—if I correctly understood your answer?

A. That is my recollection.

Q. How was the Missouri proportion of the express earnings of the entire system determined?

A. The Missouri proportion of the express earnings were based upon the freight earnings of the State of Missouri as compared with the freight earnings of the system.

Q. That is, if the freight earnings in Missouri were 20 per cent of the entire freight earnings of the system then you took 20 per cent of the entire express earnings of the system and apportioned them to Missouri?

A. Yes, sir.

Q. You have testified, the testimony appearing upon page 122 of the record, that the average maintenance of equipment ex-

1277 penses for Missouri was $1300. per mile, the average for the entire line $1020. per mile and the average for all roads in interstate group No. 6 was $900. per mile. You also testified in that connection that the average maintenance of equipment for Missouri was $1586. per mile. You were to secure some figures for the entire line.

Now, can you say from the investigation you have made, whether there has been any improvement, either in the quantity or efficiency of the equipment of the Company during the last five years, resulting from these charges you have made to operating expenses?

A. My recollection is that there has been.

Q. Can you give me the amount?

A. No, sir, I cannot.

Q. Then if I understand you correctly, there have been improvements in tracks and structure made, during the course of the last five years, and the expense of said improvements charged to operating expenses?

A. We have undoubtedly put down heavier rail, for example, in some cases, than the rail that was taken up.

I don't believe any maintaining of operating efficiency would justify the idea of an improvement in the property. That is where the Interstate Commerce people draw the line. That is, they justify a charge to operating expenses, "that which will keep the road in a corresponding condition of efficiency"—or words to that effect—which implies that you must keep up with the times, and with your heavier engines, etc., you must keep the whole property up to standard.

1278 Q. In addition to the charge to operating expenses, for placing in heavier rails, you also charge to operating expenses, the expense for building bridges—rebuilding bridges—changing their quality and capacity and also for additional miles of track laid?

A. Our rule has always been, in regard to bridges, that operation was charged with the cost of rebuilding the bridge in kind, and that the balance was charged to construction.

Q. Has that rule been followed in the figures you have given in operating expenses and the charge to capital account?

A. I think so, in the case of bridges right straight through.

Q. Now, about building additional miles of track: Have you made such expenses and charged the expense to operating expenses?

A. Additional miles of track are properly charged to construction, and that has been our practice?

Q. Are you prepared to say that such figures have not been charged to operating expenses for 1904 and 1905?

A. I think I am entirely safe in saying they have not been.

Q. Would you give it as your opinion that this three to seven fold ratio would apply to local passenger business compared with through passenger business?

A. No, sir, I leave the passenger business out of the computation entirely. I have not figured with it or made up my mind what it would be.

1279 Q. You have no estimate to give of the additional cost of carrying one passenger a mile (isn't that the unit in the passenger business?) as compared with carrying a passenger a mile on the through passenger train?

A. No, sir.

Q. Would you apply that same difference in expense between mail and express and miscellaneous earnings produced by the operation of the local trains as compared with the mail express and miscellaneous earnings produced by the operation of the through trains?

A. As a general proposition, I think that would follow the passenger closer than it would the freight. As I have stated I have not made any computation.

Mr. HAGERMAN:

Q. Mail and express would follow the passenger more than freight?

A. Yes, sir. That is, the cost of doing the local mail and express than doing the through.

Mr. HADLEY:

Q. Have you any estimate as to the expense per ton for handling freight at the terminals on the Burlington?

A. We have some terminal figures, but nothing that would give the total expenses of the terminals.

Q. Mr. Elliott testified that the terminal expenses in his opinion would amount to fifty cents per ton at each terminals as a minimum: Have you made any estimate as to what those expenses are, or do you agree with Mr. Elliott upon his figures?

A. I do not think fifty cents is too high.

Q. Have you prepared any figures upon that question, showing the cost per ton for handling freight at the large terminals
1280 and at the small terminals?

A. No, sir.

Q. Have you prepared any figures of the cost per ton for handling freight at any of the large terminals?

A. No, sir.

Q. Have you prepared figures showing the cost, excluding the cost of maintenance of track and structures?

A. We have made up certain figures that cover part of the business. That is, my recollection now is, that the figures show the cost of the station work and the handling through the ware house.

Q. What were they?

A. I cannot tell you that. I shall be glad to furnish whatever we have on the subject.

Q. What stations did you figure that for?

A. I think we figured it for the larger stations, like Chicago, St. Louis, Omaha, Kansas City and St. Joe. I am not sure about St. Joe but I think so.

Q. Then those compulations did show the expense of handling freight at terminals, which would be called a direct expense, would it?

A. No, sir, I would not consider that showed the direct expense.

Q. It showed all the expense, excluding maintenance of way and structures?

A. No, sir.

Q. What expense did it include?

A. My recollection is, it showed the expense of handling through the ware-house and the clerical force.

1281 Q. That would apply to only less than carload business?

A. Yes, sir, that is my recollection.

Q. Upon carload business, have you any figures showing the cost on that?

A. I don't think we have any such figures. We made a great

multiplicity of statements and I will be glad to look up what we have prepared.

Q. Have you made an analysis of the September way bills, as to the questions involved in this case, and particularly the cost and expense per ton per mile?

A. That is in process of preparation?

Q. Have you already made any?

A. No, sir, we have no means of making any until we get all the way bills.

Q. Has there been made, to your knowledge, any estimate in the past from the way bills of any month or part of a month, or more than one month, in reference to the questions involved in this case?

A. No, sir.

Q. Such as Mr. Gray testified had been made for the Great Northern?

A. No, sir.

Q. How is Company material handled and how is the expense of handling it shown, or the earnings from handling it, credited in your accounts?

A. There ar-n't any earnings from handling company material, except in the case of material used for construction purposes.
1282 That is, if we build a new line, we charge for the haul of the material for that new line.

Q. You charge it to the line?

A. We charge it to the cost of the line.

Q. But any reconstruction work on your line, the hauling of timber, ties, rails, and bridge iron, etc.?

A. We do not make any charge.

Q. Is such tonnage or such material hauled upon revenue freight trains?

A. Sometimes.

Q. You have charged in your compilation the expense incident to the hauling of that freight, but have not shown any revenue produced by it, because there is no revenue?

A. In the case of operating and renewal work, there is no revenue.

Q. Have you a record of that tonnage?

A. Yes, sir, we have a record of the tonnage for the system, that is, the amount of company material.

Q. Does that include coal?

A. Yes, sir. That does not include all company material. Where it is hauled in small lots there is very little attention paid to it unless it is regularly way-billed. Of course, all that is regularly way billed is taken into account.

Q. That is you had a record of it?

A. Yes.

Q. But there is no decrease in the operating expense as calculated in this case, based upon that tonnage?

A. No, sir, because we consider that part of the operating expense.

Q. Are all of the expenses of operating terminals at St.
1283 Joe and Hannibal charged to the State of Missouri?

A. Yes, sir.

Q. Is not a great deal of service performed by these terminals in connection with traffic that comes from or goes to points on or by way of the Burlington lines east of the Mississippi River, upon which Missouri gets no revenue; that is, that applies to Hannibal and St. Louis, doesn't it?

A. I believe that is a correct statement?

Q. And isn't it also true that a great deal of terminal service is performed at Kansas City and St. Joseph on business coming from or going to Iowa and States west of the Missouri River upon which Missouri gets none, or a very small proportion of the revenue?

A. It is not a fact that it gets no revenue, because every shipment out of St. Joe or Kansas City, going either to Iowa, or directly West must make certain mileage in the state of Missouri, so there is some revenue included in all those cases. It is different on the other side of the State where St. Joe and Kansas City do not get it.

Q. Are there any trains made up at Kansas City that go right straight across the Kansas line?

A. No, sir.

Q. But there are trains that are made up on the tracks at St. Joe and cross the Rulo bridge and go off into the State of Nebraska?

A. No, sir, they have to go north of St. Joe before they get to the Rulo bridge.

The MASTER:

Q. How far?

1284 A. I don't remember what the mileage is, Your Honor, but I should say it is 35 miles; I am not certain of that however.

Gen'l HADLEY:

Q. But the proportion derived from the hauling of that freight is apportioned to Missouri on a mileage basis?

A. Yes, sir.

Q. But all the terminal expenses go into the terminal expense?

A. Yes, sir, just as Missouri is not charged with any part of the Chicago or Quincy terminal expenses.

Q. Have you prepared and have you now figures, showing the total number of tons of freight handled by your Missouri lines in the year 1904 and also the ton miles for the same period?

A. No, I haven't that. We can approximate it. The question was asked and I see my clerk says that we haven't it. I am satisfied that we could approximate that figure.

Q. Have you approximated it?

A. No, sir, but I would be glad to approximate it. That came up on the density of traffic question.

Cross-examination continued.

By S. B. LADD:

Q. Mr. Sturgis, something has been said at the hearings by some of the witnesses as to the rates in some cases being regulated by the

law of competition; by that is meant competition with other railroads?

1285 A. I don't understand it is limited to that. That was the testimony of traffic people. There is a question of the River.

Q. Is that one form of competition that is meant?

A. So I understood them when they testified.

Q. Will you please take this map of the Burlington system and mention a place in Missouri at which your road competes with other railroads for purely state business: I mean by that business that originates and ends in the state?

A. May I interpolate a remark and say that in answer to his Honor's question, I said it was 35 miles from St. Joe to the Rulo bridge and I see by this time card it is 34 and a fraction.

Mr. HAGERMAN: It seems to me these questions would be more properly directed to a traffic man.

A. I can answer your question only in a general way. That is, there is hardly a point anywhere on the line of the Burlington road that is not in competition with some other point.

Mr. LADD:

Q. I am talking now about the Burlington in Missouri.

A. Yes, sir.

Q. The competition which the Burlington in Missouri meets from other railroads from purely state business?

A. As a general proposition, I should say, in the State of Missouri, on purely state business, it was in competition with almost every point in the state. For instance, to the St. Louis markets any

1286 point on our line in Missouri, in trying to get to the St. Louis market, is in competition with every other point in the State of Missouri and every other road in the State of Missouri.

The MASTER:

Q. Explain how that may be, Mr. Sturgis: Where there is another road, which you say is in competition with yours, and yet quite distant from a given station: How could that road be in competition.

A. I remember the point was made, I think by Mr. Crosby, about cement going from Hannibal to St. Louis, and a very low rate made therefor. That is to get it there in competition with cement that may come to St. Louis from any other point in the State or outside of the State, brought by a road coming in from the south or the west.

Mr. LADD:

Q. Either you are mistaken, or I am. I did not hear his testimony but I have read it. He said there were cement works in St. Louis, which were what they had to compete with and not cement brought to St. Louis by other roads?

A. Of course, he or any other traffic man is more familiar with direct points of competition.

Q. I understand you to say that so far as concerns other rail-

roads, which compete with the Burlington for Missouri State business, it is true of almost every road in the state of Missouri? Is that right?

A. It may be true at any station on any road in the State of Missouri. It may be true.

Q. What are these other roads that the Burlington competes with for purely state business: Do you mean that the Burlington
1287 competes with every other road in the State for purely state business?

A. That is my opinion. And it may be at any one of the stations on any one of the other roads.

Q. I think 18 railroads of the state have brought actions in the courts similar to this one, all of the railroads which have tracks in the State: Were you present at any of the conferences which preceded the filing of these bills?

A. I believe not according to the best of my recollection.

Q. Have you conferred with the accountants of any of the other companies which have brought suits in this court?

A. Conferred with them, in what way?

Q. In regard to this litigation?

A. I have had some talks, of a very general nature, with the Wabash officials. I have never been inside their offices.

Q. I am asking you if you do not know that the bringing of these suits was due to concerted action upon the part of all the railroads in the State.

A. I do not know anything about that phase of the question. Our lawyers handled that for us.

Q. Mr. Sturgis, have you made any calculation as to what the receipts of the Burlington Company would have been in 1905 if you had complied with the Act of 1905, and charged the maximum rates allowed by the Act of 1905; and, as to other articles not covered by that act, charged the rates in force, as fixed by the State Board of Railroad and Warehouse Commissioners?

A. No, sir, I have not made any such computation.

1288 Q. Has any one connected with your Company made that calculation?

A. No one connected with our Company has, but my recollection is, that so far as the question of what the diminution would have been, if we had charged on these particular commodities referred to, the full rate, your expert did make up those figures; and my recollection of the testimony is, that I stated I had no reason to question those figures.

Q. That is true, but that is not what I am getting at: Have you made any calculation, or has any been made up by any one in your office, as to the amount which would have been received by your Company, during the years 1904 and 1905, if for the freight which they carried they had received and charged the rates authorized by the Board of Railroad and Warehouse Commissioners?

A. No, sir, no such calculation has been made.

Q. Mr. Sturgis, what was the surplus of the Burlington system for the fiscal year ending June 30, 1906?

A. Whatever is given in there (indicating Annual Report of the Burlington Company) is the figure.

Q. After paying operating expenses, taxes, interest on all bonds, and the sinking fund, 7% dividend upon capital stock of the C., B. & Q. Company and any other charges?

A. You have the figure?

Q. I am not sure that I have. Will you look it up and see? (Handing Report to witness.)

A. $5,085,284.53.

Q. What was the surplus, if any, of the system for the year ending June 30, 1905, after paying all those charges and those
1289 dividends?

A. I have not the figure here.

Q. Wouldn't it be easy for you to get that right here in town?

A. No, sir, I don't know where I would get it, unless some one had a copy of our last Annual Report.

Q. What was the surplus for the system, after paying all those charges (by "those charges," I mean interest on all the bonds, 7% dividend upon the capital stock of the Company) for the year ending June 30, 1904?

A. I can get it for you but I haven't it here.

Q. I will ask you what is the total surplus, the accumulated surplus now, or at the end of June, 1906, of the Company, after paying all those charges and those dividends?

A. The income account balance, as shown by that report, for the year ending June 30, 1906, is $41,649,536.94.

Q. I see on page 19 of the Annual Report of the Board of Directors to the Stockholders, for the year ending June 30, 1906, under the head of "Composite General Balance Sheet" an item of $10,000,000, renewal fund: Is that in addition to the $41,000,000.?

A. That and the profit and loss balance, and the Income Account balance, might be considered as making a total surplus account.

Q. What are those three items, Renewal Fund—on this page to which I am calling your attention now, the $41,000,000., accumulated surplus, is listed here under the head of "Income Account"?

A. Yes, sir, I explained that as the balance on Income
1290 Account; that is the result of operation.

Q. Now there is another item just above that on this page, "Renewal Fund $10,000,000.;" another item just below "Profit and Loss $14,334,903.89;" does the sum of those three items represent the accumulated surplus account of the Company, after paying all its fixed charges and dividends on its stock?

A. While in a general way I may say yes to that, it must be understood that that figure does not represent the result of operation; it is not surplus from operation. It represents, really, the balance between the two sides of the account. In other words, presumably we have that amount of money put into our property, that is not covered by debt or capital stock.

Q. I don't suppose you have $41,000,000. on hand in cash. But you have a surplus, over and above your operating expenses, dividends on your stock, payment of interest on your bonds, proper at-

tention to your sinking fund, you say as a result of operation, $41,649,536.94: Is that right?

A. From the beginning up to June 30, 1906.

Q. I am speaking of the surplus account now in a broad way. I do not understand a computated system of bookkeeping, but in a broad way should that $10,000,000. be added to that?

A. That $10,000,000. was set aside out of the income at different times. About $9,000,000. was set aside prior to 1894, as I recollect, and perhaps earlier still; and one year since then we set
1291 aside $1,000,000. It remained that same way for some years.

Q. And you have an accumulated renewal fund of $10,000,000., according to this Report, which has been taken out of earnings from time to time?

A. It might be called a Renewal Fund; It is not attached to any particular thing. It is part of the Income balance.

Q. It is part of the Income Account as much as the $41,000,000. is part of it?

A. Yes, sir.

Q. And that also is true as to the $14,000,000.?

A. No, sir, that is an entirely different element. Other roads carry their income account balance for the year directly to their Profit and Loss Account. We do not do that. The idea of our Income Account Balance has been to show the cost of operation or show the result of operating the property, from the beginning, and as you have properly stated, the Renewal Fund shown there of $10,000,000. may properly be considered a part of that Income Account Balance.

Mr. HAGERMAN:

Q. What do you mean by "From the beginning"?

A. From the time the road started in 1856.

Mr. LADD:

Q. You said a moment ago that you were not at present able to give me the amount of surplus for the year ending June 30, 1905; can you rely sufficiently upon the Report of the Railroad and Warehouse Commissioners of this State to look at this statement and tell me what it is from that?

1292 A. You see there is a small difference in the balance on income account at the end of that year. I say "small,"—it is comparatively small; it is a matter of about $3,000, which I cannot offhand account for. But in round figures this shows the income account balance for the year ending June 30, 1905, at $6,062,000.

Q. Do you remember approximately how the surplus account for the year ending June 30, 1904, compared with that?

A. No sir, I do not.

Q. You don't know whether it was more or less?

A. Oh, it was considerably less, according to my recollection; but that is a very general recollection.

The MASTER:

Q. Was that last item you gave the accumulated surplus, or was it the surplus for one year?

A. Just that particular year, and in round figures. There is a small difference of three to four thousand dollars, which I cannot at the present moment explain, because I have not the books here.

Mr. HADLEY:

Q. I find on page 35 of this report that I have been referring to, a statement of the sinking fund, amounting in the aggregate to $26,057,339.13: Is that in addition to the income account, profit and loss account, and renewal fund account, we have been talking about, that your Company has accumulated?

A. No sir, this cannot be added to the income account balance, because this includes accretions to the sinking fund; that is, money set aside——

Q. It has come out of earnings, that $26,000,000?

A. No sir.

1293 Q. Where did it come from?

A. I was going to explain it.

Q. Exactly; that's what I am waiting for.

A. For example, during the year 1906, we set aside for a sinking fund, under a provision in the bonds, $721,953.49. That is turned over to Trustees. This $26,000,000 shown on page 35, to which you refer, is the payments of the class I referred to as having been made this year, for a long series of years, and also accretions to the fund in the way of interest on investment of this fund, as they have invested it. In other words, the sinking fund is in the hands of Trustees, and the full amount of the accretions, and the balance of the fund, does not represent the total amount that came out of the income account of the railroad.

Q. Do I understand that the sinking fund of $26,000,000 and some odd dollars did not all come out of the earnings, but that it represents what came out of the earnings and was put into the sinking fund, and what the sinking fund has earned as interest?

A. That is right.

Q. How much of it is interest—a small part of it?

A. Oh no, a very considerable part.

Q. Is half of it interest?

A. I have not any idea at all, not the slightest.

Q. Couldn't you give us any idea?

A. No sir.

Q. What interest does that sinking fund get?

A. It depends upon the bonds into which they put their

1294 money. This is an account which started almost as soon as the road began, in 1856. In order to tell you that I would have to refer to the general books of the Company.

Q. Have you any bonds outstanding that are fifty years old? You talk about 1856.

A. We have no bonds fifty years old.

Q. Why do you talk about 1856 then?

A. I am talking about the time this income account began to accrue, to make up the amount you have given, and it has been growing since the road started; and the road started in 1856.

Q. Do you think $1,000,000 of that $26,000,000 came out of earnings?

A. I haven't the slightest idea. I should be glad to furnish the figures, if you desire it.

At this point recess was taken until two o'clock, P. M.

After recess on Monday, November 12th, 1906, the following proceedings were had:

Cross-examination of C. I. STURGIS (continued).

LADD:

By Mr. HADLEY:

Q. Mr. Sturgis, I asked you a number of questions several weeks ago on cross examination regarding some items contained in the statement of operating expenses for the year ending December 31, 1905, and the questions were based upon the assumption that
1295 it was correct from your books. Have you examined since to see whether it was?

A. Yes, the exhibit that covers the apportionment of expenses between freight and passenger business has since been compared and found to agree with the books.

Q. You testified that in 1905, I think it was, $500,000 was taken out of earnings (by book-keeping), and placed in an account—I have forgotten just what you call it—but for the purpose of making some expenditures on the Kansas City Bridge: you remember that item, don't you?

A. Yes sir. My recollection is that it was 1905, and the amount $550,000 charged to operating expenses.

Q. $550,000 in 1905, and, if I remember aright, $100,000 in 1904?

A. $550,000 in 1905, and $100,000 in 1904. That was not charged to Missouri expenses; that was on the total. Our action was, to charge it to the total expenses.

Q. Wasn't it all apportioned to Missouri?

A. (After examining statement:) Yes sir, I see that it was.

Mr. SPENCER:

Q. But not to local business?

A. No sir, not to local business.

Mr. LADD:

Q. It was apportioned to Missouri because the bridge is entirely in Missouri?

A. Yes sir.

Mr. HAGERMAN:

Q. This is the same matter that is referred to in the exhibit you produced this morning, itemizing those items?

A. Yes, sir, Exhibit 11.

1296 Mr. LADD:

Q. Are those two items, aggregating $650,000, included in this renewal fund item, on page 19 of the report to the stock-holders?

A. No sir.

Q. Of $10,000,000?

A. No sir; as I explained this morning, that fund was accumulated a long time ago, and without any specific piece of work in mind.

Q. In what item of this account, if it is here at all, is that $650,000 involved?

The MASTER:

Q. What account do you mean by "this account"?

Mr. LADD: On page 197 of the printed report of the Burlington to the stock-holders.

A. I believe it is included in the sundry account balance, and bills receivable. Without looking at the actual details on the books I couldn't tell you.

Q. What does that amount to there?

A. $1,501,000.

Q. Do you know what the Kansas City Bridge cost?

A. No sir, I do not, but I know the estimated cost. My recollection is that when the question first came up of what to put aside, the estimated cost of replacing in kind was $900,000. Those estimates are made, of course, by the engineers, but I know that was the figure we had in mind all the time in setting aside the fund.

Q. You are using the bridge?

A. Yes sir, certainly we are using the bridge.

1297 Q. And the Wabash uses the bridge?

A. The Wabash also uses the bridge.

Q. And you say it is the intention of your company to put $650,000 into that bridge in the way of repairs, or to make it fit for service?

A. The bridge has got to be entirely rebuilt. Now, I am not talking from my own policy, because I do not have the fixing of the policy, but what I understand to be the policy is, to rebuild the bridge just as soon as affairs here in Kansas City, in regard to terminals, are so that we know what they are going to be.

Q. You mean pull it down?

A. Yes sir.

Q. Why?

A. Because it is too old a bridge, and ought to be renewed.

Q. It is accommodating the business, and holding up the trains?

A. It is today, but just how long it will hold up the trains is a question.

Q. Do you think it is fair to charge that to operating expenses?

A. I understand, if it were not for this uncertainty as to just where the road will cross the river, this bridge would have been rebuilt be-

fore this; which implies that we are probably under extra heavy expense in keeping up that bridge.

Q. You will have a more valuable bridge than this one?

1298 A. When they put in a bridge, it will be double-tracked.

Q. It will be more valuable?

A. I suppose so.

Q. Then it will be in the line of an improvement, won't it?

A. That part that is beyond replacing the old bridge. The estimate of $900,000 is an estimate of the cost of replacing the bridge in kind. We may spend a great deal more than that.

Q. You were requested some time ago to obtain some information from your books, which you said you could do, and I will call your attention now to the questions:

What was the total cost of maintenance of way and structures for your entire system, for the year ending June 30, 1904?

A. The total cost of maintenance of way and structures for the year ending June 30, 1904, for the System, was $10,121,393.27.

Q. How much would that average a mile?

A. $1,085.12 a mile.

Q. For 1904?

A. Yes sir.

Q. How much for 1905?

A. $10,921,270.41.

Q. How much is that an average per mile?

A. $1,035.91.

Q. What was the total cost for maintenance of equipment on your entire System, for the year ending June 30, 1904?

A. $8,232,280.85.

Q. How much is that per mile?

1299 A. $963.92.

Q. Now the same inquiry for 1905?

A. $9,694,076.11.

Q. And the average?

A. $1,125.63.

Q. Right at this point, returning to this sinking fund of $26,000,000, and odd dollars, don't you think it is fair to consider your indebtedness as reduced by that amount?

A. No sir, I do not, as bearing on the question of the propriety of charging against income.

Q. You owe, my recollection is, $174,000,000, in round numbers: that was your testimony this morning, I believe?

A. $174,172,000 funded debt.

Q. That is, the Burlington, and other companies whose obligations it has assumed: that is right, isn't it?

A. Yes sir.

Q. Now, isn't it fair to say that the indebtedness is really $26,000,000 less when you have got that amount of money on hand, which has been set apart for the payment of the indebtedness?

A. No sir, when you take into consideration the fact that if it had not been for the sinking fund—or if it had not been for the sinking fund's provision in the bonds and mortgages at the time

they were issued, it would have undoubtedly required a very considerably larger amount of funded debt to produce the same amount of cash for the road to be built with.

Q. You don't think it is fair, then, as I understand you, to consider the net indebtedness of the company as the gross
1300 indebtedness diminished by the actual amount of the sinking fund on hand to meet that indebtedness?

A. In one sense it is fair; that is, merely taking that question alone—which is another way of asking whether that will be used to pay off a certain amount of the funded debt. But bearing on the question of the right to so consider it in connection with the question of deducting sinking fund from income, it is not proper to consider this merely as a reduction of the funded debt.

Q. Have you obtained the information as to the density of traffic in Missouri as compared with the average density for the entire system?

A. No sir, I have not. I think General Hadley this morning touched upon that question, and I told him we had not the figure to give the density of traffic in Missouri, and my clerk so reported to me in answer to a question. But I am satisfied it can be approximated, and I shall be very glad to have it approximated. The density of traffic on the road, as a whole, we have, and I have those figures here. And I shall be glad to approximate it for Missouri.

Q. The reason I asked you was because that was one of the points to which your attention was called several weeks ago.

A. So far as giving it actually, we cannot do it; but I believe I can approximate it very closely, and shall be glad to do so.

Q. Will you give it to me, then, for Missouri, for your entire line; and for each of the States into which your line runs;
1301 can you do that?

A. I don't think I could do it at all for those years, in each of the states.

Q. Can you do it for Missouri?

A. I say, I shall be glad to approximate it for the State of Missouri.

Q. For those two years?

A. Yes sir.

Q. Can you do it for your entire line for those two years?

A. Yes sir, I have that figured here, and that is not a case of approximation, for the entire system.

Mr. HAGERMAN: He is asking you if you can divide it, and give it for the several States.

A. I cannot do that.

Mr. LADD:

Q. Can you approximate it for the other States?

A. We could for some of them. Of course we could make some sort of approximation for all of them, but I think we could get closer for some than for others. For Missouri I think we could get a pretty close approximation. For some of the other states it would be a good deal off.

Q. What is it for the entire line?

A. For the year 1904, the density, that is ton miles per mile of track, figures 710,557 ton miles.

Mr. HAGERMAN:

Q. Do you mean that many tons carried per mile?

A. Ton miles is the number of tons carried one mile. The
1302 way we arrive at the density is to divide the total ton miles by the number of miles of road.

The MASTER:

Q. Then, for each mile of the entire system, as I understand it, you move 710,557 tons of freight one mile?

A. Yes sir.

Mr. LADD:

Q. Can you give me the same information for 1905?

A. 714,898 ton miles.

Q. Can you give it to me for Missouri for both of those years?

A. No sir, I have not the actual figure. I shall be glad to approximate it.

Q. Can you give me the approximation?

A. I will have it made up, and handed in.

Q. Mr. Sturgis, you mentioned this morning a mortgage of $960,000 on the St. Joe & Des Moines Railroad?

A. Yes sir, about that amount.

Q. How much of that road is in the State of Missouri?

A. My recollection is that the whole of it is in the State of Missouri. I think it ran from East St. Joseph to Albany. I think Albany was the northern limit of that road. This is the old narrow guage, St. Joe & Des Moines road.

Q. It does not run into Iowa at all?

A. Not at all, if my recollection is correct.

Q. How much of the Leon, Mt. Air & Southwestern R. R., on which there are $112,000,000 of bonds, is in the State of
1303 Missouri?

A. There again, I do not remember the exact limits of the old corporation. But speaking from general recollection, I should say about one half. I think it ran from Leon, in Iowa, down to Albany, and then from Mt. Air to Grant City. From this map (indicating) I should say roughly about half in each State, or a little more than half in Missouri; but I have not the exact mileage.

Q. Those two mortgages, with the four others you mentioned, the mortgage of the Hannibal & St. Joe; the Kansas City, St. Joe and Council Bluffs, the Tarkio Valley, and the Nodaway Valley, are all the mortgages there are on any part of the Missouri System: is that true?

A. Those I believe to be the only mortgages directly bearing on any part of the Missouri system.

Q. Well, are there any mortgages indirectly bearing upon it?

A. No sir, I did not mean to imply by my emphasis that there was.

Q. That covers the entire mortgage indebtedness on the Missouri part of the system, those six mortgages?

A. No sir, I should not want to admit that without qualification.

Q. What other mortgages are there?

A. While there are no other mortgages, the answer should not be understood as in any way implying that there is no other bonded debt——

Q. I am talking about mortgages; I am not talking about
1304 bonded debt at all.

The MASTER: Do not interrupt the witness.

A. —which has been influenced or affected by our property in Missouri.

Q. When you were on the witness stand before, you gave the cost of doing the local freight business during the calendar years 1904 and 1905, upon the basis of its costing three times as much as doing all the freight business: Now, I asked you then to figure out how much that expense would be upon the basis of seven times as much: have you done that?

A. I have done it.

Q. What does it amount to?

A. The amount for the year 1904 is $5,273,803.60; for the year 1905, $5,780,011.09.

Q. That is the total cost, the total expense of doing the business, on the basis of its costing seven times as much?

A. Yes sir.

Q. That is not the cost, but the expense.

A. I understood you to ask expense.

Q. That is what I did ask: Now did you include in that the local freight's proportion of the $3,169,369.73 for rental in 1904; and of $2,893,614.75, the same item for 1905?

A. Yes sir, I did.

Q. Have you made a calculation of what the operating expense would be if you excluded the local freight's proportion of that item of rental?

1305 A. And still took the seven times idea?

Q. Yes.

A. I have a computation here, leaving out the taxes also.

Q. Well, leaving that out; taxes is a comparatively small amount?

A. The expense in that case would be $3,647,129.70, for the year 1904; and $4,150,083.44, for the year 1905.

Q. Now, on the basis of your local freight earnings for 1904 being $1,351,388.48, according to your exhibit here, what would have been the loss? What was the loss in 1904, upon the basis of its costing seven times as much to do the local freight business as all the freight business of the State?

A. On which basis of calculation?

Q. Seven times.

A. With or without the fixed charges, rental, etc.?

Q. If you have it both ways, give it.

A. The first computation which I gave was on the basis of seven times, using the total of operating expenses, rental and taxes. And the deficit resulting in that computation, using the local earnings less the diminution, is $3,922,415.12. The corresponding figure for 1905 is $4,301,467.43. Similar computations, omitting taxes and rental, give a deficit for the year 1904 of $2,295,741.22; and for the year 1905, $2,671,539.78.

Q. So that under the last system of computation, leaving out the rentals and the taxes, the deficit would have been pretty nearly twice the gross earnings?

1306 A. Well, eighty or ninety per cent greater.

Q. The gross earnings would have been used up, and almost twice as much more.

A. Yes that is right. It is 170 or 180 per cent.

Q. You would have used up all your gross earnings, and almost twice as much more as the gross earnings, in order to earn them?

A. Between one and a half and two times more—yes sir.

Q. And the same is true of 1905?

A. Yes sir.

Q. And that is exclusive of the rentals and taxes?

A. Yes, exclusive of the rentals and taxes.

Q. For the year 1904, what was the ratio between the cost of doing the entire freight business of the State of Missouri, to the freight earnings for that year; that question includes both State and inter-state business.

A. If I understand your question, it merely asks what per cent of the total earnings in Missouri the cost of doing the freight business was.

Q. This is confined to freight. The total freight earnings of Missouri.

Here are the questions that I intended to ask you, and if it is going to take any great length of time to answer them, I think we had better defer it.

A. To answer your question, the expenses of the freight for the year 1904 (which I understand to be the expenses shown on that Exhibit 6 that you referred to a moment ago, and which was

1307 handed in at the last hearing), to the freight earnings, is 84 plus per cent.

Q. Do you include in that the rental and taxes?

A. No sir. I understood you to say to exclude those.

Q. Are you sure you are right about that? The question is, the proportion of total freight expenses to total freight earnings of Missouri, excluding rental and taxes?

A. It will take some little figuring to work that out. I may have gone at that on the wrong basis, in these hasty figures. It can be made right from Exhibit 1.

Q. I have several questions I wish to ask you, which I will give to you. But first I would like to know the ratio of operating expenses to the total freight earnings in Missouri?

A. For both years?

Q. Yes; excluding rental and taxes. And for the same years

the ratio of cost of doing passenger business relatively to passenger earnings in Missouri. And both ratios as applied to your entire system for those two years.

A. Those figures can all be made up from Complainant's Exhibit 1, which has been given here. It is merely a question of figuring it.

Mr. HADLEY:

Q. You have not the total freight as distinguished from the passenger operating expenses? Have you those figures?

A. We have the figures the same as we have them for Mis-
1308 souri, as we gave them for Missouri. It should be distinctly understood that that is made up purely as a measure of our operating efficiency.

That being understood, the freight expenses for the system for the year 1904 were $26,636,978.91. Freight expenses for 1905 were $26,685,162.97.

Q. That includes interest and taxes?

A. That excludes interest and taxes.

Q. And for the passenger business?

A. The passenger business expenses for 1904 were $13,172,513.62; and for 1905 $13,048,536.42.

Q. You have already divided them for Missouri?

A. Yes, you have that figure in Exhibit 6. I should like to have it understood: do you want me to work up these comparisons now that your experts have the figures, to enable them to do the mathematical figuring?

Q. You have given us gross earnings?

A. No sir, I have given you expenses.

Q. Have you given us the earnings?

A. You already have them.

Q. The earnings for the entire system?

A. I think so, but if you haven't I can give it to you.

The freight earnings for 1904 were $42,046,395.09; for the year 1905, $47,612,036.91.

The passenger earnings for 1904 were $15,639,606.02; and for 1905, $15,196,915.44.

Q. You haven't figured the expense yourself?

A. No sir; it is very easy to figure from those amounts, but it will take a little time.

1309 Q. That does not include rental or taxes?

A. No sir.

Q. It includes everything else except rental and taxes, doesn't it?

A. It does not include what we call "fixed charges." That includes rental, taxes, and the sinking fund.

Q. It includes everything but rentals—rentals includes dividends——

A. Dividends are not fixed charges. That is merely a bookkeeping technicality. Dividends are not included, either. You understand those figures do not include replacement fund charges, or renewal charges. Those are not divided between freight and passenger.

The expenses figures that have been given are those shown on our sheets that we make up for the operating officials.

Questions by Mr. HADLEY:

Q. You say that the Old Monroe line was paid for by the company in bonds or money?

A. It was paid for in money. There were no specific bonds issued on any mortgage covering that line. During the time that was building, we were selling Illinois 3½ to 4 per cent bonds. That is the way they are described in the series.

Mr. SPENCER:

Q. Explain what you mean by "Illinois bonds"?

A. Protected by the mortgage issued on Illinois property. That money was put very largely outside of Illinois, and a great
1310 deal of it in Missouri. But you cannot say specifically "That piece of road was built from the specific returns from those bonds."

Q. I don't care for that. What I want to get at was the Old Monroe Line built by a construction company?

A. No sir, by the Company.

Q. By the Company itself?

A. Yes sir.

Q. Have you an account on your books showing the amount you paid for material, and the amount paid for labor?

A. Yes sir.

Q. Will you permit Mr. Fisher to have access to those accounts?

A. Yes sir.

Q. Did Mr. Fisher ask you for access to them?

A. They are right on the books of the Auditor of Expenditures, and Mr. Fisher was put in that office and told to be given anything he wanted to see, and I understand he checked that with other items he asked for at the time.

Mr. HAGERMAN:

Q. This statement you read from this morning was one of the things given him?

A. Yes sir; that was one of the questions he asked, I suppose under your advice, two or three months ago.

Mr. HADLEY:

Q. What question?

A. About the Old Monroe road.

Q. You say it was asked under my advice?

A. I supposed so.

Mr. HAGERMAN: He means that you asked for the information, and he got up the statement.

1311 The WITNESS: That has been my understanding.

Mr. HADLEY:

Q. Are you familiar with the average cost of constructing a mile

of road, such as the territory the main line of the Burlington crosses in North Missouri?

A. No sir. We have not built any main line in Missouri except that, in my memory. That is, the Hannibal & St. Joe was bought by us already built. But there is no reason why that should not be a very fair example of constructing like roads, that is a road without large terminals, and without the equipment.

Q. You think during the course of the last five years the average cost of constructing a mile of railroad in territory such as the Burlington runs through in Missouri, would be represented by $45,000, as a fair average?

A. I think the Iowa & St. Louis has cost away over that. That is the only other piece of road I can think of at present.

Q. When was that built?

A. That was bought when it was supposed to have been built, about three years ago, I should say, or perhaps further back than that. We practically had to rebuild it all the way through.

Q. Where does that road run from?

A. It runs from a station called Biddle—they keep changing the name of it—up to Sedan in Iowa.

Q. It runs up through Macon, doesn't it?

A. It doesn't come down as far as Macon.

Q. You say it cost to construct that road more than
1312 $45,000 a mile?

A. That is my recollection, a good deal more.

Q. Do you know whether your company has made any return upon this Old Monroe line, as to its actual value, to the State Board of Equalization in Missouri?

A. I don't know whether they have or not. It was opened for business only about a year ago, speaking from memory.

Q. Is that a double or a single track road?

A. Single track, I believe. I haven't actually been over it myself, but I understand it is single.

Redirect examination.

By Mr. HAGERMAN:

Q. Just one word about the bonds: These $141,000,000 of bonds issued by the C. B. & Q. Railroad Co., as shown by your statement, were in the form of bonds issued without any security at all, and also bonds that would be secured upon certain divisions of the road, say in Iowa or Illinois: Now, as I understand, the proceeds of those general bonds were used upon the entire system, regardless of the particular place where the particular mortgage might rest?

A. In a great many of the cases, that is a fact. I should say, roughly speaking, in most of them.

Q. And in some instances, in taking up the underlying mortgages on some of the constitutent companies, as you bought them?

A. Yes sir, the ownership was obtained by it.

1313 Q. What do you understand the policy of the Company to be, to get it bonded so that one would cover the entire system?

A. To get it down to a few; to clear them up on the different districts.

Q. As far as raising money is concerned, where you are going to use that money has nothing to do with the location of the property for which the particular mortgage is issued?

A. That is so, at the present time.

Recross-examination.

By Mr. LADD:

Q. Do you know of any particular case where the bonds of the C. B. & Q., or their proceeds, have been used to pay off mortgages on a Missouri railroad?

A. Yes sir.

Q. What one?

A. There was a bond, for instance, on the St. Louis, Keokuk & Northwestern, which runs from Keokuk down to St. Louis, which has been entirely wiped out.

Mr. HAGERMANN: And the C. B. & K. C.

A. I don't remember any bonds on that. That was a good many years ago. But that bond on the "K Line", as it was called, running up through Hannibal, that was largely, if not entirely wiped out by the proceeds of bonds issued at other places.

Mr. LADD:

Q. You say, "undoubtedly." Have you any actual in-
1314 formation on that point?

A. Mr. Ladd, we don't keep the money resulting from the sale of any particular bonds in one pocket or one bank, and the money received from another series of bonds in another bank. It all goes into one pot. When you speak of where the money came from that went for one piece of construction, you can say only in a general way, it came from this or that series. Undoubtedly the money that went to cancel the bonds on the "K Line" came from bonds, the underlying security of which was outside of the State of Missouri.

Q. Do you mean to say that the proceeds of the sale of bonds, and the earnings, are all kept in one account.

A. Undoubtedly.

Q. Do you say that the proceeds of any Burlington Railroad bonds were used for the purpose of paying off any mortgage on the St. Louis, Keokuk & Northwestern Road?

A. Repeat that question, please.

Q. I am asking whether you said that the proceeds of bonds of the Burlington Railroad Company were used for the purpose of paying off the mortgage of the St. Louis, Keokuk & Northwestern?

A. I believe the money realized from the sale of those bonds was used for that purpose.

Q. How much?

A. I can't tell you.

Q. When was it?

A. I should say those were cleaned up about 1898 or 1899. That

is talking very generally. My records, of course, would
1315 show it.

Q. Are you certain any of that money was used that way?

A. I cannot trace a single cent, and say, "That came from here", or, "That came from there."

Q. You testified in answer to Mr. Hagerman that the proceeds of some of those bonds of the C. B. & Q. were used for the purpose of paying off mortgages, or used for the purpose of paying off mortgages on the system: I ask you if the proceeds of any of the Burlington bonds were ever used for paying off any mortgage in Missouri, and if so when, and where, and how much? If you have any definite information on the point, that is what we are after.

A. I have been explaining and trying to make clear to you, that we raised money at that time through bonds; and that money went into our treasurer's hands; and the money taken out of our treasurer's hands was used to pay this mortgage, to build the Old Monroe line, and to build our St. Louis terminals.

Q. I am not asking about the Old Monroe or the St. Louis terminals.

A. I am saying that to illustrate the point.

Q. That is not my point. My point, and please confine yourself to it—Is money raised to pay off mortgages on the Missouri part of the system? You spoke about another road besides the St. Louis, Keokuk & Northwestern.

A. The Chicago, Burlington & Kansas City, I think Mr. Hagerman mentioned.

1316 Q. How much proceeds of bonds was used to pay off any mortgage on that road?

A. As I said in reply to Mr. Hagerman, I don't think there was any mortgage on that road.

Q. Then the only case is that of the St. Louis, Keokuk & Northwestern?

A. No sir. I believe the Keokuk & Northwestern also had bonds.

Q. That is another road?

A. Yes sir.

Q. You believe that road had bonds?

A. That is my recollection.

Q. And you believe that the Burlington Company paid off those bonds out of bonds issued by itself; is that right?

A. I did not say so exactly. I said I believed some of the funds accumulated from the sale of bonds on other parts of the road were used for cancelling that indebtedness; but tracing any particular dollar, I say is impossible.

Q. You say you "believe": is it shown on your books?

A. Because I believe—and I believe the books will show—we did not have enough money from other sources to do it, unless we used some of the money from those bonds.

Q. You say you "believe": You have been Auditor for a good many years: Is that as far as you can state?

A. That is as far as I can state without the books being here.

1317 Redirect examination.

By Mr. HAGERMAN:

Q. But this $141,000,000, when the proceeds were raised from those bonds, it went into the general cash account of the Burlington Road, and there was no limitation on the expenditure of that cash, but it went to any portion of the system where it was needed?

A. That explains it exactly.

Questions by Mr. SPENCER:

Q. In regard to those stations competing with each other in different parts of the State: Do you know Mendota, and Sedan, up on the C. B. & K. C. Road?

A. Yes sir.

Q. That is a coal region, isn't it, where they have coal mines?

A. Yes sir.

Q. Do you know where Richmond, Missouri, is?

A. Yes sir.

Q. Out east from Kansas City?

A. About thirty or forty miles east of Kansas City.

Q. About a hundred miles from St. Joe to Mendota, and they are nowhere near each other in the State of Missouri?

A. They are on different roads.

Q. Assuming the rate on coal to be fifty cents a ton from Richmond to St. Joseph (which I understand to be the fact), would not that affect all shipments of coal from Mendota into St. Joe?

1318 A. It would be direct competition.

Q. So in that way you mean that almost every station is affected by competition on some other line, in some other part of the State?

A. That is a concrete example, to explain my general remark this morning.

Q. That stations do not have to be near each other in the State to compete with each other?

A. No sir.

The MASTER:

Q. Being on different roads?

A. Yes sir.

Recross-examination.

By Mr. HADLEY:

Q. If they have the same product to send to the same market, on different lines, those two products compete, and in competition the price is affected by the freight rate?

A. I don't mean to admit the price is affected by the freight rate. The freight rate is affected by the price. That is, where it is one hundred miles, they have to come down and meet the competition of the place fifty miles away.

Q. I don't know that I understand you, but is it your idea, Mr. Sturgis, from your acquaintance with the expense of constructing

railroads, that at present it would cost $45,000 a mile to build a single track road in replacement of, say, the Hannibal and St. Joe, from Hannibal to St. Joe, or the line from Kansas City to St. Joe, from St. Louis to Hannibal, or from Hannibal north along
1319 the Mississippi: or the line north from St. Joe along the Missouri River: Is it your idea that to rebuild them, in the condition they are now in, those lines would cost $45,000 a mile—without equipment, I mean?

A. I am not an engineer. I really have no expert knowledge on that question.

Q. I know, but you are familiar with the expenses as you have learned them?

A. There are all sorts of single track lines. You can put a single track line across the State of Missouri very cheaply. It all depends upon the ties and rails, etc., you use. When it comes to duplicating the Hannibal & St. Joe, I think it would be very difficult to replace it for $45,000.

Q. To replace in as good a condition as now, you think it would cost $45,000?

A. It would depend upon the topography of the country somewhat.

Q. You are familiar with the topography of the country through which this line runs?

A. In a general way. This can-ot be considered as expert testimony. You probably don't know, yourself. You are concerned with the law, and I am concerned with accounts. I am not familiar with grades, etc.

1320 Mr. HAGERMAN: One thing I ought to call attention to, and I may perhaps have to do it with the introduction of records.

Assuming that this situation would develop, that the law would be confiscatory as to one or two, or half of the rates, and not confiscatory to the others: that question should be put into the record in some form. I do not mean that we should at this time try some other case——

The MASTER: That is a question with which the Master has nothing to do, except insofar as it may operate upon the matters that are tried before him.

Mr. HAGERMAN: It may be necessary to go to the report in some particular case, to get that fact.

Mr. HADLEY: Do we understand that you do not rest your case now?

Mr. HAGERMAN: I mean it is a question we must agree upon at some stage.

The MASTER: I shall expect Counsel to close this case; that is to say, unless there should be some particular witness or witnesses whose attendance you are unable to secure at this time. I think I have promised both sides that I would hold the case open for one or more witnesses, if you are unable to secure the attendance of such witnesses. But before proceeding with the other cases, I shall expect this case to be closed.

1321 As a matter of fact, this case will not be argued until all the facts are submitted in the other cases. As I understand it, all the cases will be argued together. If something should develop in the other cases which should necessitate the submission of additional evidence in any one of the several cases, I should feel it my duty to open the case for that purpose.

Mr. HAGERMAN: With the exception of one witness, we are ready to rest, with the exception of that one point, which we cannot get to until the time of making the finding. There is no way of putting it in now.

Mr. HADLEY: We have talked this over enough among ourselves to know that we do not agree, or that we have reached the point where we agree to disagree, upon the law applicable to the situation, that that which may be remunerative on one line may be confiscatory on another. Perhaps one line was a bad piece of railroad judgment, and ought never to have been constructed. I don't see how we can adopt any basis except to say it would be a question for Your Honor to decide, after the various cases have been heard, whether the effect of this law upon some little road, which was constructed as the result of bad judgment, and should never have been built, from a business standpoint, should affect the Burlington roads, if the Burlington should be able to make a fair return on the money invested.

The MASTER: I shall decide each case upon the facts submitted in that case.

1322 Mr. HAGERMAN: I was going to suggest this was all our witnesses, except Mr. W. C. Brown, who was in Chicago for two days when you and I were there, Your Honor, but General Hadley was detained by illness in his family.

Mr. HADLEY: There will be no objection upon our part.

The MASTER: The Complainant closes, then, subject to the right of introducing Mr. Brown at a later date.

Mr. HADLEY: We will be ready to proceed in a few minutes.

We wish to introduce in evidence in this case the result of the examination that is now going on of the September way-bills. On account of the sickness of Judge Spencer, my occupation in other matters, and the distance between Mr. Hagerman, Judge Spencer and myself—the distance between all of us—Judge Spencer in St. Joseph, Mr. Sturgis in Chicago, Mr. Hagerman in Kansas City—some misunderstandings have arisen.

Mr. SPENCER: There will be no trouble about that. They will be introduced.

Mr. HADLEY: I realize that the difficulty of communication in the matter has perhaps prevented a clear understanding upon the part of representatives of Counsel of both sides, as to what was to be done.

Recess was here taken for half an hour.

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1324 *Testimony in Behalf of the Defendant.*

E. M. FISHER, a witness of lawful age, being duly produced, sworn and examined in behalf of the Defendant, testified as follows, to-wit:

Direct examination.

By Mr. H. S. HADLEY:

Q. Give your name, residence and occupation?

A. E. M. Fisher: Minneapolis: Public accountant.

Q. Are you connected with any company that is engaged in the accounting business?

A. Yes sir, with the National Accounting Company, of Minne-

Q. Where is that located?

A. With offices in Minneapolis and St. Paul.

Q. How long have you been in the accounting business, Mr. Fisher?

A. Public accounting?

Q. Yes.

A. Altogether about seven years; seven or eight years.

Q. What business were you engaged in prior to that?

A. Railroad accounting.

Q. Were you employed in examining railroads' accounts?

A. I examined railroad accounts in receivership cases, and for the State of Wisconsin.

Q. Give those cases?

A. In the case of the receivership of the Cleveland Canton
1325 & Southern Railroad in 1894; and the L. E. & St. L. about the same time. The Chicago, Milwaukee & St. Paul, C. B. & Q., Northwestern, Wisconsin Central, Great Northern, the Northern Pacific, and the South Shore Road in the State of Wisconsin.

Q. You were employed by the receiver or counsel for the respective parties to examine the accounts?

A. Yes sir, except for the State of Wisconsin. That employment was by the Railroad Commissioner of the State of Wisconsin.

Q. When was that, and how extensive was that work?

A. That was in 1903 and 1904. It extended over about sixteen or seventeen months.

Q. Did these examinations you refer to require the examination by you of the earnings and expenses of the different roads you have spoken of?

A. Yes sir, with the exception of the State of Wisconsin, where the question of expenses was not involved.

Q. That involved a question of taxation?

A. Yes sir.

Q. What previous experience had you had in railroad work?

A. I went into railroad work in 1878, in the local office, and I was for about seven years with what was known as the I. B. &. W., which is now mostly in the Big Four Road. I was about seven years with that road, in various capacities. When I left there, I was Chief Clerk, freight and passenger.

Q. Were you ever in the operating department?

1326 A. I worked in the office of the Superintendent of the Storage Department.

Q. Did you have any other experience?

A. I worked on the disbursement accounts of the Union Pacific and Santa Fe Roads. I was Chief Clerk in the disbursement office of the Great Northern. I was Auditor and Car Service Agent of the Columbia, Sandusky & Hocking. I was Car Service Agent about half the time.

Q. And what the other part of the time?

A. I was Auditor all the time, and Auditor and Car Service Agent half the time.

Q. Did that position of Auditor correspond with the position of Auditor of the Burlington?

A. It did, except the size of the properties.

Q. Have you had any other experience beyond what you have mentioned, as an employee or official of railroad companies?

A. In my experience in public accounting work, I have examined a great many different kinds of industries and railroads.

Q. You are familiar with the general system of railroad accounting, are you?

A. I am, yes sir.

Q. There is a general similarity of these accounting systems of all railroads?

A. In general, yes sir. There are some matters of detail where there are some differences, but nothing very radical.

1327 Q. Does the Interstate Commerce Commission have any system which is mandatory upon the railroads to follow?

A. It has.

Q. These different State Boards of Railroad Commissioners require certain reports?

A. Yes sir.

Q. And are the books of railroad companies kept generally in reference to the making of these reports?

A. In general, yes sir. Sometimes they do not keep all the details they work that up at other times. They keep all the detail as they go along.

Q. Is the general purpose of railroad accounting to determine the percentage of operating expenses as compared with earnings?

A. That is one of the purposes, yes.

Q. You were employed by the State of Missouri, in this case, were you, to examine the accounts of the Burlington, to examine the books containing the accounts?

A. Yes sir.

Q. You began that examination when?

A. On the 16th of June, I think it was.

Q. 1906?

A. Yes sir.

Q. And where was that examination begun?

A. Chicago.

Q. And how long has it continued?

A. It has continued up to the present time, and is still under way, part of it.

1328 Q. The work you are now engaged in, is the examination of the September way-bills?

A. Yes sir.

Q. At the time you began your examination, did you have submitted to you a statement of earnings and expenses in Missouri for the Burlington system, for the years 1904 and 1905, which has been introduced in this case, and marked Complainant's Exhibit 1?

A. I did.

Q. Was your examination of the accounts of the System made in reference to that statement?

A. It was, in special reference to that statement.

Q. Refer to that statement, and I will ask you if you have it to turn to for the purpose of reference?

A. I have a copy of it.

Q. The first item that appears there is "Earnings from Freight," under the heading of "Local," $1,525,158.52?

A. Yes sir.

Q. How was that item arrived at by the Burlington Railroad Company in making up this account?

A. They compiled from the billing of the local business their state business, to arrive at these figures——

Mr. HAGERMAN: We had some trouble once before by some one differentiating as to the meaning of the word "local": do you use that word in the sense of State business?

A. Yes sir.

The MASTER: He uses it in the sense it is used on page 1 of Exhibit 1.

1329 A. I said local or State business, so there could be no misunderstanding.

These were worked up on sheets, and then compiled to arrive at this result. It was impossible to make a complete verification, on account of the volume; but I made tests enough to satisfy myself that the figures the Burlington submitted in that form were correct.

Q. You did not check over all the way bills to show the earnings from State or local freight?

A. No sir.

Q. How was the item $6,199,300.13 arrived at?

A. That was arrived at by a division of the revenue on a road mileage basis, between the States; the part of the road over which the traffic moved; taken from the billings, and abstracts, and monthly reports.

Q. That is, they apportioned to Missouri that portion which was indicated by the mileage in Missouri?

A. Indicated by the mileage in Missouri and the mileage outside of the State. For instance, a shipment which moved one hundred miles, fifty miles in the State, and fifty miles outside of the State, was divided half and half; or, if it was twenty-five miles out of the State, and seventy-five miles inside the State, it would be one-third and two-thirds.

Q. Were the figures on interstate business made up there in the Burlington offices from the way-bills?

A. In most cases, yes.

Q. What do you say to that method of apportionment on a mileage basis: is that fair to the State of Missouri?

1330 A. I think not.

Q. Why not.

A. On account of the difference in rates. From an examination, I found that the rates in Missouri are anywhere from twenty-five to thirty-five per cent higher than they are in either Iowa or Illinois, where the bulk of interstate traffic is handled. If it was

divided on the basis of rates, instead of on the road mileage basis, it would increase the earnings of Missouri considerably.

Q. Was it possible for you to make that approximation, during the time you have had to devote to this case?

A. It was not.

Q. Take the item of earnings on State passenger business as shown in this report: how was that arrived at?

A. That was arrived at practically on the same basis as the other. It was taken from the book reports, instead of the way-bills.

Q. How were the earnings from interstate business arrived at?

A. They were arrived at from the book reports on a mileage basis.

Q. Is there some difference between passenger rates in Missouri and these other states?

A. No sir, no difference. The bulk of it is all on a uniform basis of three cents a mile.

Q. You would not have the same criticism as to that division of the passenger business that you would make of the division of the freight business?

1331 A. No sir.

The MASTER:

Q. Waiving your exception as to the unfairness of the railroad in making this table, did you verify the figures upon the basis they did adopt, and are those figures correct?

A. Substantially, except minor errors that would not affect the result; they are substantially correct.

Mr. HAGERMAN:

Q. That question the Master asked you refers to the second item on interstate freight?

A. Yes sir.

General HADLEY:

Q. Take the State or local earnings from mail, express, etc., the earnings on State business, what do you say as to that item?

A. With the exception of some items of car service in there, in the mail and express, I think it has been properly divided between State and interstate business.

Mr. HAGERMAN:

Q. What is the exception you make?

A. Switching and car service. With the exception of those, I think the rest of the statement is substantially correct; and probably is as advantageously, or as equitably apportioned as could be.

Mr. HADLEY:

Q. What do you say about the switching and car service?

A. I think part of that, any way, should be assigned to freight business.

Q. Why?

A. Because it has altogether to do with the handling of freight,

with the small exception of switching that might be involved
1332 in the handling of passenger traffic.

Q. Have you made any apportionment of the amount which should be added to the earnings from freight, State and interstate, on account of the earnings from car service and switching?

A. I made an apportionment based upon the total earnings to local earnings, in that case.

Q. Just give it, if you have it there.

A. The amount would be, in 1904, on switching, $25,756.97; and in 1905, $23,364.55.

Mr. HAGERMAN:

Q. You think that ought to be taken out of miscellaneous and put in freight?

A. I think that much ought to be credited to local freight business.

Mr. HADLEY:

Q. How much should be added to the interstate freight business for 1904, and how much for 1905?

A. I find that I will have to figure that?

Q. I will withdraw the question.

A. It would be the balance between that and the amount shown in the statement.

Mr. LADD:

Q. What is the total switching amount for each year: have you that?

At this point, Complainant, with leave files Exhibit 12, being an itemized account for the years 1904 and 1905, of the items called in Exhibit 1, "Miscellaneous Earnings."

Said paper, marked Complainant's Exhibit 12, is in the words and figures following, to-wit:

1333 Mr. HADLEY:

Q. Mr. Fisher, if you cannot turn to that, I will go on, and you can get those figures later.

A. I haven't it here just now.

Q. Take the expenses for the year 1904, as shown by Exhibit 1: how was the cost of conducting transportation determined by the Burlington Railroad?

A. It was a method of apportioning expenses to the State. They show everything that is local to the State, where it is possible. For instance, expenses at all the stations in the State are charged up to the State. Expenses of train service in the State is charged up to the State. The general expense is apportioned on a revenue train mileage basis.

Q. That is a recognized method of apportionment, is it?

A. Yes sir. Some of the maintenance of equipment expenses are apportioned on the basis of car miles, freight car or passenger car mileage.

Q. Is that a recognized method of apportionment?

A. It is.

Q. Take the item, "Maintenance of way and structures": how about that——

You have those figures for switching and car service both, which should be added?

A. Yes sir.

Mr. HAGERMAN:

Q. Were these amounts $25,000 and $23,000 out of switching or the other?

A. Out of switching.

Mr. HADLEY:

Q. Take Maintenance of way and structures: How was
1334 that apportioned to Missouri?

A. That is, wherever possible——

Mr. HAGERMAN:

Q. They simply apportion to Missouri that proportion which the entire amount bears to Missouri?

A. Yes sir.

Mr. HADLEY:

Q. Take Maintenance of Way and Structures; How was that amount apportioned?

A. On the actual location it is charged. Right here in the State it is charged. Any different expense that can be located is charged direct to the State expense, on a station building, or on a certain piece of track. An expense that would be common to more than one State, like the expense of a Road, master, or supervising officer, where his jurisdiction extended in two states, that would be divided on a maintenance car mileage basis.

Q. Now, take the general expenses for 1904; how were they determined and apportioned?

A. They were apportioned, I think, almost exclusively on a revenue train mileage basis, except in cases where they could tell exactly where the expense was incurred.

Q. Did you take the figures as they appear on the books of the company, in that item?

A. I did.

Q. Take the item of expense "Taxes, $188,751.46", that, of course, I suppose, was a definite item?

A. Yes sir, that is exactly what they paid.

Q. You have an item of expense in that statement, "Proportion of Rental $3,169,369.73", which is charged to expenses: what
1335 is that item?

A. That is made up of interest on the bonds, seven per cent dividend on the stock, and an amount set aside for the "sinking fund," as they call it.

Mr. HAGERMAN:

Q. To retire the bonds?
A. Yes sir, to retire the bonds.

Mr. HADLEY:

Q. What do you say about charging that item of over $3,000,000 to expenses?

Mr. SPENCER: We object to that, as not being a question of expertness, but a question to be decided by the Court.

Mr. LADD: You asked him about that.

The MASTER: The objection will be over-ruled.

Mr. HAGERMAN: Without renewing it, I wish to stand on the record as objecting to that line of inquiry. I don't want it to be assumed that the experts are necessarily deciding that question.

Mr. LADD: It is pertinent in this view; whether it is customary to charge these things into operating expenses.

The MASTER: It is a matter of opinion, as to the Court, the witness, or anybody else, how they reached that conclusion.

The objection will be over-ruled, and you may proceed.

A. I don't think it should be charged into the operating expenses, to determine what the net earnings of the property should be. In my opinion, the place to charge that would be against the in-
1336 come account, or the profit and loss account, after arriving at their net earnings. I don't think it should be taken in, in arriving at what the earnings of the property would be.

Q. Is there any other item in that account of expenses for 1904 which you deducted?

A. Well, in arriving at the expenses on freight business, yes there is. There is $550,000 set aside for replacement——

Q. I am asking about 1904.

A. It is $100,000 for 1904, and $550,000 for 1905.

Q. Why do you say those should not be charged for those two years? What bridge was that?

A. The Kansas City bridge.

Q. That makes the total for 1904 and 1905 $650,000 charged to expenses for the reconstruction of the Kansas City bridge?

A. Yes sir.

Q. You say that should not be done?

A. Not to that extent. If it is to be taken into account, in arriving at the net earnings, it should be spread over the life of the structure.

Q. What would that be?

A. That is about thirty years. That would be, probably, $25,000 a year, or in that neighborhood; approximately that. Somewhere from $25,000 to $30,000. That would have to be determined by the actual life of the structure.

Mr. HAGERMAN:

Q. And by its actual cost?
1337 A. Yes sir. I am figuring on the amount that has been mentioned, $650,000.

Mr. HADLEY:

Q. Then, Mr. Fisher, the sum of these various items, as given on Complainant's Exhibit 1, shows the gross earnings to be $12,891,-638.78?

A. Yes sir.

Q. And their gross expenses, $10,837,291.67?

A. Yes sir.

Q. As you figure it, their gross earnings would be the same, but the expenses, instead of being $10,000,000, are how much?

A. $7,617,920.94.

Q. Making their net earnings for the year 1904, upon the business done in the State of Missouri, how much?

A. $5,273,718.84.

Q. Eliminating the same items of expense in 1905, and accepting, as I understand you do, the statement for gross earnings in that year, of $12,584,607.64, what do you make their expenses?

A. I make their expenses $7,727,223.41.

Q. Making their net earnings for the year 1905, upon the business done in the State of Missouri, how much?

A. $4,857,384.23.

Q. That made their ratio of expenses and taxes to earnings in 1904, what?

A. 59.09 per cent.

Q. And their ratio of expenses and taxes in earnings in 1905, how much?

1338 A. 61.4 per cent.

Q. What do you say as to that ratio between operating expenses and taxes, to earnings, as shown by those figures, as to whether that is usual or unusual; low or high?

A. It is lower than the average in the operation of a road.

Q. Lower than the average?

A. Yes sir.

Q. More revenue is produced for less expense of operation, than on the average railroad?

A. Yes sir.

The MASTER:

Q. What are those percents you have given?

Mr. HADLEY: My question is, the ratio, or per cent. of rental and taxes as compared with the earnings of 1904.

Mr. HAGERMAN: It takes $59.09 to earn $100?

Mr. HADLEY: Yes.

The MASTER: What is the 61.4?

Mr. HAGERMAN: That is for the next year.

Mr. HADLEY:

Q. Did you get the figures of the State Board of Equalization for the value of the property of the Burlington System in Missouri for 1904?

A. I did.

Mr. LADD: Let me ask a question, so I can understand this: Have

you included those items for the Kansas City bridge, in the statement of expense?

A. I did. But I left all the other replacement account on cars, etc. I thought it was all proper enough that that proportion of the amount should be taken into account. While the amount
1339 was not actually expended, I thought it was a reasonable amount.

Mr. HAGERMAN:

Q. I understood that in arriving at the net sum you gave General Hadley for the two years, you made the reduction on the specific things to which he had referred on the former examination, rental, etc.?

A. Yes sir.

Q. And this percentage is after making those reductions?

A. Yes sir.

Mr. LADD: I understand what he means, but it is not very clear: You said, that you had excluded, in your estimate of the operating expenses, the Kansas City bridge amount of $650,000?

A. That is right.

Q. Did you include any part of it?

A. I include no part of it.

Q. What did you say you allowed to remain in?

A. There are some items of repairs to locomotives and cars, which were taken into account.

Q. Do you know what they amount to? Have they been referred to?

A. $917,000 was the total amount in 1905, and $180,000 in 1904, which would include the Kansas City bridge items: that is about it

Q. What estimate did you make, based upon the assessment of the property?

A. Two and a half times the assessed valuation, after excluding the valuation the amount assessed for the franchise, and
1340 for the Pullman equipment operated on the road.

Mr. HAGERMAN: I thought that was three times, as a matter of fact.

Mr. HADLEY: I think that is the basis on which the Board endeavors to assess, but on account of some figures we have had, I asked him to make it up on the basis of two and a half times. I do not think there is any disagreement upon the proposition that the Board tried to assess on the basis of one-third of the valuation.

Q. You have the figures, Mr. Fisher?

A. Yes sir.

Q. What figures for 1904, upon the estimated value of the property, did these earnings give?

A. In 1904, it would show a profit of 20.4 per cent on the basis of two and a half times the assessed valuation.

Q. And in 1905 what would be the per cent?

A. 17.84 per cent.

Q. Have you made a computation from the books of account of

the Burlington System, as compared with the gross earnings per mile in the State of Missouri?

A. I did, yes sir.

Q. What are the gross earnings per mile of the Burlington System?

A. In 1904 they were $7,688.06.

Q. That is, for every mile of road on the entire system?

A. Yes sir.

Q. And the gross earnings were $7,688.06 per mile?

1341 A. Yes sir.

Q. I mean, the gross earnings in Missouri?

A. $12,493.

Q. What were their gross average earnings per mile upon the entire system in 1905?

A. $6,811.02.

Q. And what were the average gross earnings per mile in the State of Missouri?

A. $11,021.

Q. That included both freight and passenger business?

A. Yes sir, it included all business.

Q. Have you their net earnings per mile on the entire system?

A. Yes sir.

Q. What were they in 1904?

A. $2,347.

Q. And what were their net earnings in 1905 on the entire system?

A. $2,534.51.

Q. What were their average net earnings per mile upon that part of the road in the State of Missouri, in the year 1904?

A. $5,110.19.

Q. And their average net earnings per mile upon that portion of the road in Missouri, in 1905?

A. $4,253.41.

Q. Have you their gross earnings per mile on the entire system?

1342 Mr. HAGERMAN: Is this on all kinds of business.

A. Yes sir.

Mr. HADLEY:

Q. Have you their average gross earnings per mile on freight for the entire system?

A. Yes sir.

Q. What was it for 1904?

A. $5,265.56.

Q. And their average gross earnings per mile on freight business in the State of Missouri for 1904?

A. $7,484.94.

Q. What were their average gross earnings per mile on freight business on the entire system in 1905?

A. $5,070.89.

Q. And what were their average gross earnings per mile on freight business done in the State of Missouri in 1905?

A. $7,342.50.

Q. What were their average net earnings per mile on the entire system, on freight business, in 1904?

A. $1,850.76.

Q. And their average net earnings per mile on that part of the road in Missouri in 1904, on freight business?

A. $2,787.33.

Q. And their average net earnings per mile on freight business on the entire system in 1905?

A. $1,831.60.

Q. And their average net earnings per mile on the freight business for that portion of the road in the State of Missouri, in 1905?

A. $3,245.87.

1343 Q. Now, Mr. Fisher, what explanation is there, from your investigation as a railroad expert accountant, of this difference in the average net earnings per mile on the Burlington System, throughout its entire line, of $1,850 in 1905, as compared with the average net earnings per mile of $2,787.33 for the State of Missouri in the same year?

A. That is from two causes.

Q. What are they?

A. One is the higher rates charged in Missouri than for most of the territory. It is the higher rates charged than in any of the territory east of the Missouri River, from 25 to 35 per cent higher, and the density in population and traffic.

Q. And does the same explanation hold good in reference to the gross earnings, including freight and passenger business, with the elimination of the difference in passenger rates?

A. The same thing would apply, yes sir.

Q. Then what per cent greater earnings per mile is there on the business done by the Burlington in the State of Missouri, as compared with the average earnings upon the entire system?

Mr. HAGERMAN:

Q. On all business?

Mr. HADLEY: I am asking particularly about freight. It would be just the per cent that $1850 is of $2787: what per cent is that?

A. Yes, sir, that is what it would be. I don't know that I clearly understand the question.

1344 Q. How much greater was the per cent of earnings upon the business done in the State of Missouri, per mile, as compared with the net earnings of each mile of the entire system?

A. Nearly one hundred per cent.

Q. And that is true of 1905?

A. Not quite so heavy in 1905. It would be about ninety per cent on 1905.

Q. You said this difference in rates in the State of Missouri made this difference in earnings: Do these rates affect the interstate, or the earnings of the Burlington upon interstate freight business that they do?

A. You mean the local rates—the State rates?

Q. Yes.

A. Why, certainly. They have an effect on the interstate rates.

Q. In what way?

A. They have the effect of increasing the interstate rate over the same rate per mile that they would have from Illinois or from Iowa.

Q. The interstate rate is never more than the sum of the locals?

A. Very rarely.

Q. But the high local rate in Missouri, enables them to make a higher interstate rate than if the rate in Missouri was as low as the rate in Illinois? That is the point, as I understand it.

A. Yes sir.

Q. But as I understand you, in the apportionment of these earnings that fact was not taken into consideration by the
1345 Burlington system?

A. No sir, it was not.

Q. And were your figures taken upon the basis of the apportionment of earnings upon a mileage rather than a rate basis?

A. I accepted it on the mileage basis, because there would not have been any opportunity to compile it on any other basis. Had there been, I should have done that.

Q. What I want to get at is, in making the statement that the average net earnings per mile upon business done in the State of Missouri in 1904 was $2,785, in determining that amount there was not considered the difference in rates between Missouri and Illinois.

A. No sir.

Q. So, the average net earnings per mile on the Burlington system in the State of Missouri would have been larger if there had been apportioned to Missouri the division of inter-state rates according to rate?

A. Yes sir, the proportion in Missouri would be greater than this illustrates.

Q. So in the explanation of these greater net earnings of the Burlington in Missouri, upon the business done here, the element of higher rates enters only into the business done wholly in the State of Missouri?

A. Yes sir.

Q. And the same thing would be true of 1905?

A. Yes sir.

Q. And when you stated that the rates in Missouri were
1346 higher than in the States east of the Missouri River, you meant on business done wholly in the State?

A. The comparisons I have made were with Illinois and Iowa. The Illinois part would be east, and Iowa west. But I have made a comparison of rates between the State rates and the rates east, in Illinois and Iowa both, as compared with the Missouri rate.

At this point an adjournment was taken until tomorrow morning, Tuesday, November 13th, at ten o'clock, A. M.

1347 KANSAS CITY, *Nov. 13th*, 1906.

Met pursuant to adjournment as above, on Tuesday, November 13th, 1905, in the Federal Building, Kansas City, Mo.; present, parties as before; when the following proceedings were had:

JOSEPH M. MCDONALD, a witness of lawful age, being duly produced, sworn and examined, on behalf of the Defendant, testified as follows, to-wit:

Direct examination.

By Mr. HADLEY:

Q. State your name, residence and occupation?
A. Joseph M. McDonald; 1412 Indiana Avenue, Kansas City; Yardmaster for the Burlington at Kansas City.
Q. How long have you held that position?
A. About fourteen years.
Q. What are your duties?
A. To make up and break up trains; and switch them in accordance with orders from the local freight agent.
Q. And you are familiar, are you, with the different classes of freight trains that are operated out of the Kansas City yards here?
A. I am familiar with the freight trains, yes sir.
Q. What are the kinds of freight trains that are operated on the Burlington system?
A. You mean the numbers?
Q. No. There are through freight trains, and local freight trains, and extras, are there?
1348 A. Yes sir.
Q. That is the classification?
A. Yes sir.
Q. You say that you make up these trains, or you superintend the making up of them, under the directions of the local freight agent?
A. Yes sir, I get the billing from the local freight agent.
Q. What record do you keep of the consist of these local freight trains?
A. I don't keep any.
Q. Where is there any record kept showing the consist of these different freight trains that are made up here in the Burlington yards?
A. In the local freight office.
Q. Does that show the number of cars in each train?
A. Yes sir.
Q. Does it show the origin of the car, where the car was loaded, and where it is destined?
A. I can't tell you that; I don't know.
Q. Don't you keep any record of the numbers of the freight cars in each train that you make up?
A. We keep the numbers of them for the benefit of the car clerk.

Q. I don't care for whose benefit you keep them: Do you know where the freight in each car is going?

A. No sir.

Q. All your record shows is the number of the car, and
1349 the number of cars in the train?

A. Yes sir, and the number of the train it went out in.

Q. How can you make up the train unless you know the destination of the freight in the cars?

A. We make it up by numbers, you know. We have a code of numbers to switch by.

Q. But don't you make up your train in reference to where certain cars are to be dropped off?

A. Oh yes; if they are what we call "short loads" we mark them up to that point.

Q. Then you are notified, are you, and don't you have a record of each freight train, as to where the different cars in that freight train are going?

A No, sir, we do not.

Q. Who has that record?

A. I presume the man who handles the bills.

Q. Does he keep a record of the number and the destination of each car in each train?

A. Yes sir, I suppose he does.

Q. What is his name?

A. Dale Harmon.

Q. What is his title?

A. Local freight agent.

Q. And what is this record called, in which is recorded the number of the car, and the origin and destination of the shipment?

A I don't know what he calls it.

Q. But it is a record in his office?

1350 A. Yes sir.

Q. Each of these different freight trains takes a number: the freight train has a number, the same as a passenger train?

A. Yes, if it isn't an extra. The extra doesn't have a number. It takes the number of the engine.

Q. What is the first freight division of Kansas City on the North?

A. St. Joe.

Q. Is there a freight division ending at Cameron Junction?

A. No sir.

Q. What is the freight division east?

A. Brookfield, Mo.

Q. Do through trains made up at Kansas City run to Brookfield?

A. They all do except the local freight.

Q. What is the end of the division for the local freight?

A. Cameron. I was mistaken about that; that is a local freight division.

Q. Cameron is the local freight division point?

A. Yes sir.

Q. What do you mean by "short billing"?

A. If a car was going to Parkville, Mo., we would know where that car was going, and we would mark that up, either five or ten, whatever the code number, or switching is.

Q. How would you know that the rest of the cars in the trains were not going to Parkville?

1351 A. We would have the routing. If a car was going to Seattle, it would be routed via Omaha, and that is as far as I would know where the car was going.

Q. Then you do have information as to where the car was going?

A. You said the destination.

Q. I meant whether it is going to the end of a freight division, or to be distributed between Kansas City and St. Joe, or Kansas City and Brookfield. You would know that?

A. Oh, sure.

Q. You have a record that shows that much in reference to the destination of cars?

A. No sir, I haven't the record.

Q. Don't you keep this record which shows whether a certain car was to be dropped at Brookfield or go on to St. Joe?

A. No sir.

Q. Do you mean you have this information for the makeup of each local freight train, and then it is returned to the local freight agent?

A. No sir, I don't get it. They mark the cars up for destination, and my men switch them from those marks.

Q. You do not keep any records or books which show what cars in any particular freight train are bound for Brookfield, or what are bound for Wyoming, via Omaha?

A. No sir.

Q. You don't have any such record in your office?

A. No sir, not anything like that.

1352 Q. What sort of shipments do you put in what you call your through freight trains?

A. Through shipments.

Q. What do you mean by through shipments?

A. A car going to Seattle would be marked up for Omaha.

Q. Would a car going from Kansas City to St. Joe be put in the through freight train?

A. Sometimes it would, yes sir.

Q. That is a general rule in making up a freight train, isn't it, that is going to the end of the next division, to send it to that division in the quickest and most economical way possible? That is the way you make up your freight trains isn't it?

A. We would put a car for St. Joe in there, if we did not have other stuff going clear through, enough to fill it.

Q. And then another freight train would be made up at St. Joe, would it?

A. Yes sir.

Q. How is live stock shipped? On what class of freight trains?

A. It is shipped on through trains, usually.

Q. It is a very unusual thing for a shipment of live stock to come into Kansas City upon a local freight train, isn't it?

A. No sir, it would not be an unusual thing.

Q. Where do you get any shipments of live stock on local freight trains?

1353 A. All shipments between here and St. Joe, and between here and Cameron.

Q. You would endeavor to have enough shipments to bring it in in a train by itself, wouldn't you?

A. I don't know how we could get at that—that is, the railroad. If there is only one car we have to pick it up and bring it in. We could not hold that car until we got a full train.

Q. I understood you to say that practically all of the live stock is carried on through freight trains?

A. Yes sir, all the big shipments of it. If there is a train load, it would be carried on a through train.

Q. If there is a stock shipment going the distance of one division, it would be carried on the through freight train?

A. From one division to another, I think so.

Q. And all shipments that go a full division, go on a through freight train, whether bound to a point in the State or outside of the State?

A. Not all shipments.

Q. Isn't that the rule?

A. We have to have something to fill the local trains.

Q. You use your local trains for trains for picking up and distributing freight between the ends of divisions, don't you?

A. No sir, they haul full tonnage.

Q. You have no line coming into Kansas City from Burlington on the West, have you?

A. We have no line you say?

1354 Q. Coming in from Kansas to Kansas City, from the West?

A. Only the St. Joe line.

Q. A shipment bound to a point between Kansas City and St. Joe, from Nebraska, would be handled from St. Joe, to that local point, by the local freight train, wouldn't it?

A. I don't understand the question.

Q. A shipment coming from Nebraska, or Iowa, to a point like Brookfield, between St. Joe and Kansas City, would be handled how from St. Joe?

A. I couldn't tell you. I don't make up the trains at St. Joe.

Q. Where are the Burlington tracks that run into the Kansas City stockyards?

A. They are—well, I can't describe exactly.

Q. I mean, are they in the State of Kansas or in the State of Missouri?

A. Most of them are in Missouri, I think.

Q. Do you know about that?

A. I don't know just where the line is. I have heard where it was, when I was working around there; that is all.

Q. You worked down there in the Burlington yards: You have charge of the loading and unloading of live stock at the stock yards?

A. No sir, the stock yards company does that.

Q. If a shipment of live stock came to Kansas City over the Burlington, would it be unloaded in the State of Kansas, or would it be unloaded in the State of Missouri? Do you know that?

1355 A. I think it would be unloaded in the State of Kansas. I am not positive about it, as I don't know just where the line is.

Q. Then, of course, you would not be positive on the proposition of whether a carload of feeders shipped out on the Burlington would be loaded in Kansas City?

A. The loading would be done in Missouri—if I have the line right.

Q. Are you any more positive on that than on the other?

A. No sir.

Cross-examination.

By Mr. HAGERMAN:

Q. The line runs right through the stockyards, doesn't it?

A. Yes sir. One track is on one side, and one track is on the other. The line runs right through them.

1356 W. R. STUBBS, a witness of lawful age, being duly produced, sworn and examined, on behalf of the Defendant, testified as follows, to-wit:

Direct examination.

By Mr. HADLEY:

Q. Give your name, residence and occupation?

A. W. R. Stubbs; Lawrence, Kansas. I used to be in the railroad construction business. I haven't been much for the last two or three years.

Q. How long were you in the railroad construction business?

A. About twenty odd years, I guess.

Q. What railroads have you built, Mr. Stubbs?

A. I helped to build several.

Q. Name some of them?

A. I commenced on the Leavenworth, Topeka, and Southwestern, out here, about twenty-five years ago. That's the first railroad construction work that I ever did.

Q. What else?

A. Well, I have done considerable work for the Santa Fe line through the Indian Territory; and for the Rock Island in Missouri, Texas and New Mexico.

Q. What recent railroad construction work have you been engaged in?

A. The last work I did was on the Rock Island between Kansas

City and St. Louis, and the Burlington work over on their Old Monroe line.

1357 Q. You built that, part of it?

A. Our firm built it all.

Q. What is your firm?

A. Stubbs, Flipp and Johnson Construction Company, of which I was President.

Q. Did that work include the laying of the rail, or the construction of the road-bed?

A. We did just the grading and concrete work, the bridging.

Q. That left to be done by others, what work?

A. The track laying and the water service.

Q. Have you been over the main lines of the Burlington System in Missouri?

A. Yes sir, I have been between Kansas City and Chicago over the Burlington, and between Kansas City and St. Louis.

Q. And between Kansas City and St. Joe?

A. I don't know whether I have ever been over there or not; I have been to Atchison on the Burlington, I believe, on their river line.

Q. You are familiar with the topography of the country through which the Burlington line runs?

A. Yes sir, I have been all over the Northern Missouri; driven through there in wagons, and on trains, and am reasonably familiar with the country.

Q. When did you complete the construction of the Rock Island line in Missouri?

A. I think it was in 1904.

1358 Q. That is what is known as the St. Louis & Kansas City line, isn't it?

A. Yes sir.

Q. It is called the St. Louis, Kansas City & Colorado, I believe?

A. Yes sir.

Q. Is the nature of the country south of the Missouri River different from the country north of the Missouri River, from a railroad construction standpoint?

A. Yes sir.

Q. What is the general character of the country, north Missouri country?

A. Well, the general run of North Missouri country is good, average country, I think, to build a railroad through. It is not the best, and it is not the worst, by any means. It is about an average, I should say. Taking the cost of grading and bridging—and those are the items that the topography affect—it is about the average. Of course the rails, ties, and other things, cost the same everywhere.

Q. Is it what would be called a prairie country?

A. A good part of it, the country I have been through.

Q. Take the country that the Chicago, Kansas City & Burlington line runs through: is that prairie country, generally?

A. A large share of it is what I would call prairie country.

Q. What was the cost of the construction of the road bed and bridging of the Old Monroe line?

1359 A. I cannot say exactly. It was very heavy, though. A six-tenths maximum grade, I think, or possibly five-tenths.

Q. What do you mean by that?

A. Well, a one per cent. grade is a rise of one per cent. in one hundred feet; and five-tenths would be one-half of one per cent.

Q. How does that affect the cost of construction?

A. It makes it very heavy, through heavy country.

Q. What is your recollection of the cost of that construction—with that explanation?

A. The bridging and grading, as I remember, something like sixty odd miles of this work, it is my impression that it cost in the neighborhood of $1,500,000. That was the whole amount of that. It is something I haven't had my attention called to, but I think it would not vary much from $1,500,000 for the whole line, for the grading and bridging.

Q. You are familiar with the cost of ties and rails?

A. Yes sir.

Q. What does it cost for ties per mile, and what for rails?

A. The average cost of ties, I should think, was around fifty cents. A great many ties are bought for forty cents, along the line. A great many cost more than that, where they are shipped in, adding the freight; probably fifty cents or more.

Q. How much does that amount to?

A. $1,500 to $2,000 a mile for ties. $2,000 would be the outside figure, in my judgment.

1360 Q. And what for rails?

A. That depends entirely on the weight of the rail. The Old Monroe line, I think, was laid with heavy steel, and that would be probably eighty or ninety pound steel; that would run up perhaps to 125 or 150 tons to the mile, something like $20.00 a ton, with freight added,—I should think would be about the cost for the rails.

Q. And about what would that average?

A. Something like $4,000 to $5,000 for heavy rails.

Q. Was that an average or an unusually high piece?

A. That is an unusually high piece of cost. Probably, I should think, the average cost of grading in an average country, like Northern Missouri, would not exceed $5,000 a mile for the grading.

Q. You mean such country as the Burlington line runs through in Northern Missouri?

A. Yes sir, the general cost of the grading of the Burlington lines, that I am familiar with, between St. Louis and Kansas City, and the Northern Missouri lines, up through Cameron, and up through there, I should not think the grading would cost to exceed $5,000 a mile.

Q. And there would be $1,500 for the ties?

A. I would put that a little higher. I would put it at $2,000, although I think $2,000 is more than they cost.

Q. The $5,000 would include the grading and bridging?

A. No sir.

Q. Just the grading?

A. Yes sir.

1361 Q. How much would you add for the bridging?

A. The average cost for bridging in Northern Missouri looks like it ought to be $2,000 a mile, or possibly a little more than that.

Q. The cost of heavy-weight rails would be the same, wherever laid?

A. Yes sir. The great majority of lines do not have over somewhere between sixty and seventy pound rails. But some of these new lines, in these last few years, have been relaid with eighty or ninety pound steel.

Q. Counting $5,000 for grading, $2,000 for ties, and $2,000 for bridging, and $5,000 for the rails, would that be your idea of the cost of constructing the road-bed, ties and rails, of the lines of the Burlington system in the State of Missouri?

A. There is the engineering cost, and the right-of-way cost, and the buildings and water-service, and it all enters into the cost of the construction of a railroad. I wouldn't say that these Burlington lines have been built for $15,000 a mile in North Missouri.

Q. From your experience in railroad construction, what would be your opinion as to the average cost of the Burlington lines in Missouri?

A. Of course that would be—you would have to estimate that, the same as a man who is in the horse business would guess the weight of a horse. I haven't built those lines. My judgment is, though, from riding over the lines, and seeing the class of work that was done, that the Burlington lines in Missouri did not

1362 cost originally, at a very extreme outside cost $20,000 a mile, taking it all told.

Q. You think they could be reconstructed for practically that?

A. When I say "originally constructed"—they have added a great deal of ballast, and they have relaid all these lines with heavy steel, and improved the conditions, probably out of the earnings of the road—Of course, I don't know where the money came from. But I should say that Burlington lines in Missouri, from what I know of them, ought to be reconstructed for $25,000 a mile, taking the whole of it, everything.

Q. You are meaning the main lines, and not the branch lines?

A. I have not been over the branch lines. I do not speak of them, and I don't really know about them.

Q. Of course branch line work is usually much cheaper than main line construction, isn't it?

A. Well, it is in Kansas, and I suppose it is in Missouri. I have never had occasion to go over the branch lines in Missouri very much, and I don't know very much about them. Those I have gone over look very cheap; light rails, cheap cars, and light construction.

Q. As a general engineering and railroad proposition, the same effort is not made to have as good a class of construction on the branch lines as on the main lines: that is correct, isn't it?

A. Yes sir.

1363 Q. You spoke of the cost of construction of the Rock Island; what did that cost?

A. We built the first hundred odd miles out of Kansas City—I think it was one hundred and thirteen miles. First we put in concrete masonry at a very heavy cost. On some of the bridges we put in concrete piers that were fifty-five feet above the ground, and probably a great many feet down in the ground, to get a foundation. The bridging was very expensive. Taking it altogether, the bridging and grading, I have not the separate cost—it amounted to something over $3,000,000 on the 113 miles.

A. Something less than $30,000 a mile on that?

A. Yes sir.

Q. That did not include ties or steel?

A. No sir.

Q. Was that an average class of construction?

A. That was the heaviest construction that I have ever seen, I believe; and the Chief Engineer of the Rock Island told me he had never seen any as heavy a piece of construction for that distance in his life; and he had been all through Alaska, and Chief Engineer of the Northern Pacific, and all up there.

Q. By "heavy construction" you mean heavy cuts and large fills?

A. Yes sir.

Q. About how much more, if you could estimate it, than the average cost of construction, would you say this Kansas City St. Louis line of the Rock Island was?

A. In general, an average cost of grading on all the grad-
1364 ing I know of, in a good many different States, I don't think would amount to $5,000 a mile. I don't think the average cost of the grading of the railroads I know of in Iowa, Missouri, Kansas, Illinois, Indian Territory and Texas, would amount to $5,000 a mile; and this amounted to almost $30,000 a mile.

Q. So it would be five or six times as high?

A. Yes, sir; it was a very expensive piece of work, and very heavy work.

Q. What would be your idea of the average cost of grading, bridging and laying ties and rails, in ordinary prairie country, such as we find in Northern Missouri, and Eastern or Central Kansas?

A. It costs more in Missouri than it does in Kansas.

Mr. HAGERMAN:

Q. Leave Kansas out. We are dealing with Missouri.

Mr. HADLEY:

Q. What is the difference in the topography of the country?

A. The material is heavier in Missouri than it is in Kansas.

Q. You mean the roads are built heavier?

A. No sir, the class of work; clay and gumbo. It costs more to do work in Missouri than it does in Kansas.

Q. And your figures you have given have been on the basis of a Missouri estimate, and not a Kansas estimate?

A. Yes sir. There have been thousands of miles built in Kansas for ten to twelve thousand dollars a mile.

1365 Q. Including everything?

A. Yes sir, buildings, right-of-way, and everything.

Q. In your estimate that the Burlington lines in Missouri, such as you are familiar with, could be reproduced in their present condition for a maximum expense of $25,000 a mile, did you include the cost of the right-of-way?

A. Yes sir.

Q. And of station buildings?

A. Yes sir.

Q. And water tanks?

A. Yes sir. And engineering. The actual cost of reproducing the road-bed, with the buildings, water-service, and right of way.

Q. Everything except the rolling stock?

A. Yes sir.

Q. And round-houses?

A. Yes sir.

Q. Switches, etc.?

A. Yes sir; of course, that would not include terminals.

Q. Not in the large centres?

A. No sir.

Q. It excludes, as I understand, simply the terminals in the large commercial centres, and the rolling stock?

A. Yes sir.

Q. And when you gave the figures $1,500 to $2,000 a mile for the ties, that included the expense of laying them?

A. No sir.

1366 Q. That was estimated in what expense?

A. That is included in the cost of construction, track-laying.

Q. Is there an added expense to be added?

A. Oh yes.

Q. You gave the average cost of constructing a line in North Missouri as $14,000; $5,000 for grading; $2,000 for ties; $5,000 for rails; $2,000 for bridging: should there be another element added?

A. Yes sir.

Q. What would you add?

A. The laying of this track in Missouri would cost, probably, anywhere from $650 to $700 or $800 a mile; although I have lived on a track-laying outfit several years, and we layed hundreds of miles of track for $300 or $400 a mile. But it was in a dry country, where labor was cheap. In Missouri it is a good deal heavier work, and costs a good deal more money. That, however, is a very liberal estimate of the cost of laying track in Missouri.

Q. Then $15,000 would be a maximum expense?

A. State that over.

Q. I say, $15,000 would be a maximum for the expense?

A. To cover what items?

Q. To cover the item of grading——

A. I should say the grading, the average cost of grading in Northern Missouri, was—I think $5,000 would be a liberal estimate. $2,000 for the cost of ties is more than they cost. Probably
1367 $500 a mile more than they cost. I think Missouri is a well-wooded country, and ties have been bought for less than fifty cents apiece. There are about 1300 ties in a mile of road, but I want to give outside figures in this, and I am giving them.

Q. And the bridging?

A. $2,000 a mile would be a liberal estimate for bridging in Missouri. That, however, would not include bridging the Missouri or Mississippi Rivers, and very large iron bridges.

Q. Of course, there would not be any to be done in Missouri, would there?

A. Well, the Burlington has a bridge over the Missouri River down near St. Louis.

Q. I mean, from line to line, there would not be any bridges?

A. No sir.

Q. $5,000 for the heaviest class of rails?

A. Yes sir, for the actual cost of the rails; and $1,000 will more than cover the cost of laying the track.

Cross-examination.

By Mr. HAGERMAN:

Q. Let me get your estimate of $15,000 to cover everything, as you have given it?

A. Give me the items.

Q. $5,000 for grading?

A. Yes sir.

Q. $2,000 for ties?

A. Yes sir.

1368 Q. $2,000 for bridging?

A. Yes sir.

Q. 5,000 for rails?

A. The cost of the rails, yes sir.

Q. And $1,000 for laying them?

A. Yes sir.

Q. That is everything you include in your estimate of $15,000?

A. Yes sir—I don't know what that amounts to.

Q. That amounts to $15,000. And, then, at another place, you said that your estimate for Missouri was $20,000 a mile and General Hadley was not satisfied, and raised you $5,000, and said you estimated it at $25,000: which is it you estimate it? $15,000, $20,000 or $25,000 a mile?

A. I gave the specific items that amounted to $15,000 a mile. I stated further that there was right-of-way, the engineering, buildings, and water-service, and that this whole amount was probably $20,000 a mile. That would be a liberal estimate for the whole cost.

Q. That is everything?

A. Yes sir; with the road-bed, and buildings and water-service.

Then I said this line could be reproduced, in my judgment—that did not include ballast, or relaying, and betterments, and the things you have been doing in the last twenty years. I say these lines, in their present condition, in my judgment, could be reproduced for $25,000 a mile, and I think that is a very high estimate.

1369 Q. That is, $25,000 for everything?

A. I would not include your river bridges.

Q. Is there anything else you would exclude?

A. Nor your terminals.

Q. Is there anything else you would exclude?

A. That would include—I don't know that I will say it will exclude. I have said what it included, and you have it there in writing, so you cannot be mistaken about that.

Q. Now the only thing you have excluded so far is such bridges as they may have over large streams, like the Missouri?

A. Yes sir.

Q. And the terminals in large places?

A. Yes sir, that is all I can think of at present.

Q. Take it over rivers in the State, other than the Missouri and Mississippi: do you include those?

A. Ordinary bridging; you may have some large ones.

Q. We have some pretty good streams in Missouri.

A. You may have some large streams, where there is an extraordinary expense.

Q. You would — anything over the Mississippi or the Missouri?

A. Yes sir.

Q. How about the Chariton, and the Grand, and the Black Rivers?

A. Where the bridging was not extraordinary. I don't know just what the size of those streams is.

Q. What do you call "extraordinary," or "ordinary"?

A. A bridge that would cost $40,000 or $50,000 or

1370 $75,000 applied to Missouri lines, would not add any considerable cost, and the estimate I have given would cover such cost.

Q. It would cover all bridges up to that amount?

A. I think it would cover all the bridges you have, and then give a contractor a good many million dollars—that is what I think, if you want to know.

Q. I want to know everything you have included?

A. I have made this on a very liberal basis, from a railroad point of view, and you know it.

Q. We will deal with the question of liberality as we go along. We are very much obliged for it, but let us get down to facts.

A. These are facts.

Q. We have fifteen thousand dollars a mile itemized for certain things: then you said $25,000 a mile included everything, except the bridges over these large streams, and the terminal facilities.

A. I didn't say that.

Q. Well, what did you say?

A. I said I would except these things, and I don't think of anything else I would except.

Q. Then afterwards you took that back, and said you didn't want to even except the bridges: is that right?

A. No sir, I didn't say that.

Q. Well, what did you say?

A. I said I didn't think it would be necessary to except the bridges on any of the several streams outside of the Mississippi and the Missouri. That is what you have been saying for me,

1371 all this stuff.

Q. I haven't been saying anything for you.

A. Oh, yes you have.

The MASTER: Just answer the questions, Mr. Stubbs, and do not get into an argument with Counsel.

Mr. HAGERMAN:

Q. Let me see your familiarity with the Burlington Road, for a moment: Take it from Kansas City, north—you say you have never been over any of the lines north of St. Joe?

A. I have been over the line between Kansas City and Chicago, through Cameron.

Q. I will get to those others later, but take the St. Joe line first.

A. The branch lines I am not very familiar with, no sir.

Q. Then you know nothing about the line we call the St. Joe line, and the lines north of St. Joe?

A. No sir.

Q. But you have been over the line between Kansas City and Chicago?

A. Yes, sir, and between Kansas City and St. Louis.

Q. How much of the country between Kansas City and Chicago, running through Missouri, have you been over in day-light?

A. I have been out beyond Cameron in day-light.

Q. The extent of your traveling has been leaving here at six o'clock at night.

A. I have been up on the day train.

Q. How far have you gone over the country?

1372 A. I really don't remember just how far I have gone on day trips. Of course, we did this Old Monroe work up there, and traveled around quite a little bit.

Q. The Old Monroe work doesn't happen to be up towards Cameron. How much of that line have you been over in day-light?

A. I don't know that I have been beyond Cameron in day-light, although I rather think I have. I——

Q. But you——

Mr. HADLEY: Let him finish.

Mr. HAGERMAN:

Q. If you cannot understand my questions please so state.

Mr. HADLEY: I don't object to the fact that the witness doesn't understand, but Mr. Hagerman breaks in before he finishes.

By Mr. HAGERMAN:

Q. Then the sum in substance is, that so far as the Burlington line between Cameron, taking its starting from Kansas City—is concerned, you don't know anything about it on the Chicago end of it?

A. I don't know that I have looked those over in day-light beyond Cameron, although I have driven all over that country in a wagon, and I know the topography and character of the country, and have been over the Rock Island and St. Paul lines, and I know Northern Missouri pretty well. I know what I am talking about, so far as the cost of railroad construction in Northern Missouri is concerned.

Q. Let us get, now, to the rest of the Burlington roads you have been over and know something about: that is, from a town
1373 near Mexico, down to Old Monroe, and thence to St. Louis. I presume you are familiar with that, aren't you?

A. Yes sir, I have been over that line.

Q. And you did the work between Old Monroe and—What is the name of that point? Francis, isn't it, near Mexico?

A. We call it Mexico.

Q. I believe some one said the connection with the Alton was called by some name, Francis, I believe.

A. I don't know it.

Q. Did you personally have charge of any of that work?

A. Did I?

Q. Yes.

A. Well, I paid for it all, and signed checks for it.

Q. What I mean is, did you go out on the line at all, or have anything to do with it?

A. I drove over the line, and established camps, and laid it out through that gumbo.

Q. Was that during the construction?

A. Yes sir, during the construction.

Q. What I want is, did you give any personal attention to construction?

A. Yes sir.

Q. What is your idea of the difference between the country that line runs through and any other part of the main line of the Burlington system?

A. That is a very much heavier piece of work, than the average work of the Burlington road.

1374 Q. In what way? I want you to describe it, because we propose to ask the Master to ride over the line and see what the difference is, and I wish you would point it out so he can understand it when he goes there?

A. We had some very heavy fills, and very heavy cuts there, on account of the very low grade lines you established there, and the country being heavy. The cost of the work was two or three times as much as the ordinary cost of grading and bridging in average prairie country.

Q. What is the difference now between that and any other part where the Burlington line runs, that you know anything about?

A. The work is heavier.

Q. Only in the respects you have mentioned?

A. The material is—I think we got twenty-eight cents a yard for moving that material. There has been a great deal of work done in Missouri for fifteen and sixteen cents a yard. There is a great deal of heavy material in there. We called it "rock," and the railroad company called it "gumbo and clay."

Q. There is not any substantial difference between that country, and the country, take it up through Marion and Macon, and out back of the Missouri River, is there?

A. I don't think I could speak about Marion and Macon, from a material point of view. I think that is the heaviest piece of work that I know of, outside of the Rock Island work.

Q. It is very much the same kind of work that leads off from the river everywhere, whether the Mississippi or the Missouri?

1375 A. It is not the same kind of work that the railroads have built there, that I know of.

Q. Is there anything substantially different in the topography of the country, from any place else in Northern Missouri, that distance from the Mississippi River?

A. This is a very heavy country to build through, and a very low grade line. The average grade lines in Missouri are more than one per cent., I think. That is to say, they rise, the maximum grade on them, on the average Missouri road, I think is a good deal more than fifty-two feet. I think in a good many instances it is up to a two per cent. grade. I would not say that about the Burlington line. I cannot say that, because I did not build any Burlington line.

Q. You did not understand my question.

A. Yes sir, I understood your question perfectly.

Q. Then you did not answer it if you did. Take this Old Monroe line, going through the country it does, what difference—if any—is there between the topography of that country, and any other country, in the north part of Missouri, and practically the same distance back from the Mississippi River?

A. I assume, practically, in almost any country, a five-tenths or six-tenths grade line would be very heavy track. I don't know how heavy it would make it. It makes a vast difference in the cost of a piece of work, as you know.

Q. Now, will you answer my question—What difference is there between the topography of that country through which that road was built, and any other country north of the Missouri River, the same distance back of the Mississippi River?

1376 A. That is an impossible question. You want me to—There is a great difference between that and some other parts of Missouri where railroads are built; and you know it, and I know it, too.

Q. I want you to describe what you know.

A. A great many railroads are built in a comparatively level part of Missouri. But that is going right through hills, and filling

up holes fifty to seventy-five feet deep, and putting on concrete masonry of the most expensive railroad construction that you or I ever saw in Missouri. There are an abundance of railroads in Missouri that didn't cost $15,000 a mile to build.

Q. Is that the only answer you can make to my question?

A. That is a sufficient answer to your question.

Q. I beg to differ with you, so far as I am concerned. Can you tell me whether there is any difference in the topography of the country where that Old Monroe, and Monroe City line runs, than any other country through there, where railroads were built a similar distance from the Mississippi River?

A. A great many railroads have been built in much lighter country. There could be other pieces of country picked out that would be equally as heavy as that, no doubt, but I don't know of any that have been built through that kind of country. Where they are built through heavy country, they are usually built on a one-and-one-half or two per cent. grade.

The MASTER:

Q. He is not talking of all those roads in the State, but of roads built that distance away from the Mississippi River.

1377 A. There is a line built right up the Mississippi, on almost a flat grade, from St. Louis up the river, a Burlington line. It is impossible for me to compare this road with all the roads in Missouri, Your Honor. I don't know of any line that is built in as heavy a country as that.

Mr. HAGERMAN:

Q. You have given the only answer you can give to it, or will give, whichever it may be?

A. I would be pleased to give you any information I have.

Q. Is that the only answer you can make to this question?

A. I have given you a sufficient answer, and an intelligent answer, so far as I am capable of judging.

Q. Is that the only answer you know how to give to it?

A. I don't think I care to give any further information about it, unless you want some specific information.

Q. I will get to something specific: for building that road, the grading and bridging, you got over a million and a half for sixty miles?

A. Sixty-three miles, I think.

Q. What was the exact amount you got?

A. I don't know.

Q. It was practically $25,000 a mile, wasn't it?

A. I have never figured it in miles at all, but it is my recollection it was somewhere in the neighborhood of a million and a half we received for the grading and the bridging.

1378 Q. You think it is probably sixty-three miles?

A. I judge so.

Q. And it may have been over a million and a half?

A. Oh, yes, it may have been. I couldn't say: but it was ap-

proximately a million and a half. It might have been $1,400,000, or $1,600,000. It is something I have never taken the trouble to look up. The books aren't here, and I was just called in here this morning. You probably can give me the exact figure.

Q. We have given the exact figures, including your $25,000 for bridging and grading, and it is over $45,000 a mile—the whole thing.

A. What was the cost of the grading and bridging there?

Q. I don't remember. I assume you have it right, $25,000 a mile. But what I want to know is whether there is any reason to question the Burlington's figures as to the cost of that?

A. I have no desire to question them, I'm sure.

Q. Would you question them?

Mr. HADLEY: I object to the mere argument of counsel, whether he would question the figures given by Mr. Sturgis.

The MASTER: Of course, that is immaterial. It is wholly irrelevant whether he would question it or not.

Mr. HAGERMAN:

Q. It did cost in excess of $40,000 a mile: now, as I understand you, practically $25,000 of that went to you simply for the bridging and grading?

A. Sixty-three miles, and $1,500,000, makes $25,000 a mile.

1379 Q. $24,000. I have approximated it just as you did.

Mr. HADLEY: There is no dispute about that item.

Mr. HAGERMAN:

Q. What I want to see is, what you have to say to the cost of that, over and above what was paid to you?

A. You have my figures there in black and white. I wouldn't change any of my figures of the cost of rails, and ties, water-service, and buildings.

Q. Let me see what you put in for the $25,000 a mile: the grading was done: did it include any ballast?

A. Yes sir, it included everything you have got. When I said $25,000 a mile, if you will be fair with me, I made an approximate estimate of reproducing your line in Missouri.

Q. I am not asking you about the estimate: I am asking you about your $25,000 for grading. Don't make a speech, but listen to the question.

Mr. HADLEY: We object to that remark of Counsel.

The MASTER: It is perfectly fair cross-examination, but the difficulty is a disposition to drift into argument.

The WITNESS: I don't want him to confuse a statement I made with reference to all the lines in Missouri, including several river lines, with grading done at a cost of $2,000 a mile, and apply it to a line where the bridging and grading cost $25,000 a mile.

The MASTER: If you will answer specifically the questions that

are asked, and stop at the answer when given, then there will be no difficulty at all.

1380 Mr. HAGERMAN:

Q. You charged approximately $25,000 a mile for the work you did on the Old Monroe Division, which covered the bridging and grading: now, then, what was included in the grading you did for that amount?

A. With the grading?

Q. Yes; what kind of work?

A. Well, now, what do you mean by that?

Q. What I mean is, what situation was the road left in, when you got that work for grading done: was there anything more for the railroad to do?

A. Oh, yes, they laid the ties on top of the grade.

Q. Was the railroad to put any ballast on?

A. Yes, sir.

Q. That was not included.

A. No sir.

Q. It was the mere putting up of the embankment, either in the shape of a cut or a fill,—that constitutes the grade, bringing it up to the requisite level?

A. We put up a bank, yes, ready for the ties.

Q. So after that the railroad had to get the ties, put them on; get the rails, and lay the rails; and do any ballasting that was necessary?

A. Yes sir.

Q. And in that grading was not included any acquisition of the right-of-way?

A. No sir, the railroad furnished the right of way.

Q. In the grading there was not included any of the buildings or terminals of the railroad?

1381 A. No sir, none.

Q. Just the mere grading of the main line?

A. Of the Old Monroe line, yes sir.

Q. Now, let us take the bridging, and see what was included in that; the work which you did, for which you got $25,000 a mile; were the bridges complete?

A. We did not do the bridging on one heavy stream there.

Q. What was the name of it?

A. I don't remember the name of the creek. It was an iron bridge.

Q. Do you remember what streams you crossed on that Old Monroe line?

A. We crossed several.

Q. Do you remember the name of any of them?

A. No sir, I don't believe I do. I had $5,000,000 or $6,000,000 of work on hand, and that wasn't such a very big thing to me.

Q. A million and a half wasn't very much to you?

A. It didn't keep on my mind.

Q. You cannot give me the name of a stream you crossed on that line, can you?

A. I don't remember any streams on that line.
Q. All you know is there was one bridge that your bridging did not include?
A. Yes sir.
Q. And that was a bridge of considerable size?
A. Yes sir, a considerable bridge.
Q. And you don't remember the name of the river?
1382 A. No sir, I do not.
Q. In the other instance, your bridging included what?
A. In which other instance?
Q. Of the other bridges you put in, in your item of bridging?
A. It was concrete, generally, I believe. I believe it was all concrete. I don't remember that we put anything else in there but concrete.
Q. No iron or steel bridges were put in?
A. No sir.
Q. What you mean is, practically, concrete bridges; practically, large culverts?
A. They were openings large enough to carry the water through, in concrete form.
Q. And the result was you brought it up in the form of an abutment on each side, leaving that opening between?
A. Yes sir.
Q. And everything put on that afterwards was something to be done by the railroad?
A. After the grade was finished, the railroad laid the track.
Q. What I mean is, what you call bridging included in this payment of $25,000 a mile, was building the abutments on each side of the opening through the road, for the railroad to go on and complete, by putting these structures across the openings?
A. Most of those, practically all of them, I think, were covered with earth. There may have been one or two that the rail-
1383 road put in across, or put steel girders across.
Q. I don't know what you mean by covering with earth: after you come to a certain point, where you left openings?
A. We didn't leave many openings; very few.
Q. What did you include in your word "bridging"—just making the fill?
A. Where there is some very large openings, we put in concrete openings, so you could run a four-horse team, or two or three abreast, through.
Q. That's what I am getting at.
A. We would make an opening thirty-six feet wide, and bring up an arch over it, perhaps twelve or fifteen feet high, and leave an opening there that was twelve or fifteen feet deep, and thirty or forty feet wide. I don't remember particularly about this work over there, but I have made a great many of those openings,—and then we probably put on thirty, forty or fifty feet of earth on top of them.
Q. Did you do that down on that work?
A. I don't remember in detail.

Q. You don't remember how many, or wide, or how deep they were, or anything like that?

A. No sir, that is detail I don't remember fifteen minutes, I suppose.

Q. Let us take this bridging on the Rock Island; that is something you did recently in Missouri?

A. No sir, we did that about the same time we did that other.

1384 Q. You did it recently?

A. In the last two or three years.

Q. You built east of Kansas City how far?

A. One hundred and thirteen miles, I believe.

Q. That is on the St. Louis line of the Rock Island?

A. Yes sir.

Q. Is there any practical difference between the country through which that runs, and the Burlington on the Missouri River, east?

A. Yes, considerable difference.

Q. What is the difference?

A. There is a difference in the kind of material encountered. Over in your country over there, the country was very heavy indurated clay, something as difficult—or perhaps more difficult than rock to remove, and yet in an earth form.

Q. You are comparing it with the Old Monroe line?

A. That is your Old Monroe line.

Q. I am asking you to compare it with——

A. I am asking you to compare it with this line, if you will give me a moment's time. Over on this line, we had a kind of concrete gravel, that we had to blast, practically all of it—perhaps one and a half or two millions of yards of it, we had to blast. Some of it was in rock form, but a large amount of it was a cemented gravel that was run together, and had to be drilled, and blasted and taken out, with largely the same method we take out rock. The character of the material was entirely different.

1385 Q. Now for those 113 miles on the Rock Island Road, that is the main line leading into St. Louis?

A. Yes sir.

Q. You think there is some difference between that country and the country the Burlington runs over north of the Missouri?

A. They are very much alike.

Q. And you have attempted to point out what the differences are?

A. Yes sir.

Q. Your contract was $30,000 a mile for doing that?

A. Our contract was sixteen cents per yard, and it amounted to $30,000, but we had no track by the mile.

Q. What did that work include? Did it include similar work as that on the Old Monroe line?

A. Yes sir.

Q. Merely bridging and grading, as you described it on that line?

A. Yes sir.

Q. Did you give any more personal attention to that Rock Island work than you did to the other?

A. Oh, I drove over it occasionally.

Q. How many bridges, if any, were excepted upon this Rock Island, upon your work?

A. I don't know about that.

Q. Were there any?

A. Yes sir, I think there were iron bridges put in there.

Q. Whenever an iron bridge was necessary to go over any

1386 stream——

A. We built the piers for them.

Q. You put in the piers?

A. Yes sir, concrete piers.

Q. Upon what streams on the Rock Island Road did you do that?

A. Oh, I don't remember.

Q. Do you remember any of them?

A. I don't call to mind any of them. They were not very important streams to me: little arroyas or draws; but they didn't impress me very particularly.

Q. Can you recall the names of any of them?

A. No sir, I don't recall any.

Q. Any bridging you did over streams on the Rock Island Road did not include anything more than putting in piers?

A. We put in the abutments or piers.

Q. But how many of those bridges there were, you do not recall?

A. No sir, I don't remember.

Q. What I mean is, how many bridges of this character, distinguished from the character of bridges you put in on the Old Monroe work, were put in on this Rock Island work?

A. No sir, I don't remember.

Q. Do you really know that there were any?

A. I think so.

Q. You don't know any more definitely than your answer implies?

A. I rather remember two. Hall Creek is one I recall now.

1387 Q. Do you remember where that is?

A. Yes sir, outside of Versailles—I should say eight or ten miles.

Q. Do you know what county?

A. No sir.

Q. Did you ever do any other work in Missouri than that which you have described?

A. I may have, but I don't remember just now.

Q. Do you know the cost of doing all this work on the Rock Island? Not only what you did, but finishing up, that other people did, for the railroad?

A. No sir, I do not.

Q. It amounted to a good deal more than $45,000 a mile, as a matter of fact?

A. If you want me to state it, I can give you a pretty close approximate idea of the cost of those 113 miles.

Q. That is what I am getting at.

A. The rails didn't cost $5,000 a mile. They cost less than that.

Q. Do you know anything about it?

A. Yes sir: I know they were hauling rails, and in my judgment they cost $4,000 or $4,500 a mile.

Q. Is that something you know, or is it your judgment you are expressing: that is what I want to know?

A. I know the size of the rails, something like eighty or ninety, not less than eighty—I think they were eighty; and they were something over $28.00 a ton, and you can estimate that I think eighty-pound rail would run, maybe 125 tons to a mile.

1388 That is only an estimate, but you can figure that out: eighty pounds of steel for every three feet would be 160 pounds for every yard, and there are 1700 yards in a mile. It is an easy mathematical problem, but I haven't figured it out.

Q. That is your estimate, based on the knowledge you had of the situation; you allow $5,000 for the additional cost of those rails?

A. Yes sir.

Q. Do you know anything about the cost of laying them?

A. Yes, in a general way.

Q. As a matter of opinion, or what the Rock Island actually paid?

A. I don't know what the Rock Island paid for laying them, but I know what railroad track-laying costs. I lived on a railroad track-laying outfit for years.

Q. What would you allow for laying?

A. $750 a mile for laying; and I think that is a couple of hundred more than it cost them. I want to give them the advantage of it.

Q. You are very liberal. Have you included anything for the fastenings in that?

A. In the track-laying?

Q. The track-laying—the cost of it, is a good deal in making the connections, and fastening the rails together, and driving and spiking the ties.

Q. What else do you know about the cost of these 113 miles? The cost of bridging and grading, over $30,000; and the track it-

1389 self is over $5,000; what else was paid out on these 113 miles, that you know of?

A. They bought ties, of course.

Q. You can give only an estimate on that?

A. I know they were selling for forty cents apiece.

Q. What is it you allow for that, $2,000?

A. Yes sir.

Q. What else was there?

A. Right- of-way and engineering.

Q. What else?

A. Buildings, and water-service.

Q. And their bridges?

A. Their iron structures—whatever they build—and steel bridges.

Q. Anything else?
A. A railroad has no value without terminals.
Q. And you have no personal knowledge on the question of the terminals?
A. No sir.
Q. And more than you have in the case of the Burlington?
A. No sir, I don't pretend to know what your terminals cost.
Q. Except you know it is a very expensive proposition for a railroad to get into a city?
A. I know terminals come very valuable.
Q. And the larger the city of course the more valuable?
A. Yes sir.
Q. The larger a city gets, the more difficult and the more
1390 expensive it is for a railroad to get in?
A. Yes sir.
Q. And it is a pretty big matter, when you come to deal with terminals, in the great cities like St. Joseph, Kansas City and St. Louis?
A. Yes sir, they are very important, and very valuable properties.
Q. You said at some place that the Burlington grading did not cost over $2,000 a mile in some places: Where is there any grading on the Burlington that didn't cost $2,000 a mile?
A. They have a piece of road along the river bank, where there is practically no grading, except ditching, and the grading itself could not be expensive. I don't believe it has cost—I believe there are a great many miles on the Burlington, that did not cost $2,000 a mile. I don't speak of the whole line of road, but I speak of it as to ten, or twenty, or thirty miles of road, along the river bank, where you will find a good many miles of road where the grading does not cost $2,000 a mile.
Q. You made the remark in connection with a question I asked you about the line leading down by West Alton into St. Louis, leading down through the bottoms there: I presume you are applying it to that situation?
A. I apply it to any road where it is practically level, without any grading except the ditching.
Q. I don't like you to apply it to the general railroad; apply it to some specific part of the Burlington Road; take the Keokuk
1391 & Northwestern running down to St. Louis: does that remark apply to that part of the road?
A. It applies to any road that is level, and there is very little grading to it. I have rode over a good many miles of level country, that didn't cost $2,000 a mile.

Mr. HADLEY:

Q. Do you mean on the Burlington?
A. Yes sir.

Mr. HAGERMAN:

Q. You apply it to the Burlington Road, and I would like you to point out where it is on the Burlington?
A. In my judgment, that line up along the banks of the Missis-

sippi. I think you have a good many miles of road between here and Atchison, up here on the St. Joe line.

Q. Let us take that road up along the Mississippi River: Don't you know that has been banked up with stone and ballast of all kinds, in order to put it up above the high water mark, so it practically acts as a levee for all the great farming country up there through the eastern part of Missouri?

A. I presume there are places along the Mississippi where that is true.

Q. Isn't that practically true all along the bottoms, that millions have been spent in elevating that track, in order to get it above high water?

A. That may be true. I don't know about that.

Q. That is the line to which you were applying that $2,000 a mile, was it?

A. Part of it. I have been over parts of the road where
1392 it didn't cost over $2,000 a mile, to grade it.

Q. Will you point out to the Master a single mile of track on the Burlington, so that any man that lives can go and see that line, and then report its condition here to the court—a single mile of track that you are applying that remark to, on the Burlington System? Can you do it?

A. I presume there are a great many miles, I presume hundreds of them in Missouri, where it didn't cost over $2,000 a mile to grade them.

Q. You are now dealing in generalities. If it is a fact, you know it. Can you point out a single mile where we can send some one to see it, and come back here and report to the Court, so we can see what you base your opinion on?

A. In you can send an unprejudiced practical railroad man over that line between St. Louis and up the Mississippi River I think he would find a great many miles; and I will pay all his expenses out of my own pocket, if you will send a good man, and allow him fifty dollars a day for his expenses—if you send a good practical railroad man. And he will not say that the grading cost more than $2,000 a mile, for the grading of it.

Q. Then you specify that that line is the one you mean?

A. I think you will find some over in Atchison.

Q. Get back to the lines along the Mississippi. It is several hundred miles, a hundred and sixty, running along the river bottoms there; what portion of it have you in mind as costing $2,000 a mile?

A. I would not be able to point it out to you right here. I
1393 don't think it is necessary or important.

Q. What has been your business in the past three years, Mr. Stubbs?

A. I am raising some Duroc Jersey pigs, for one thing.

Q. Anything else?

A. I am president of the Lawrence National Bank.

Q. You are not in the railroad business, and have not been for some time?

A. I have tried to be, but I haven't been.

Q. For how long?
A. About two years. I have bid on about ten or fifteen million dollars of construction work, but it has not been awarded to me, any of it.
Q. Why not?
A. I reckon my bids were too high.
Q. $2,000 a mile for grading? Where have you made any bids in the last two years?
A. I have bid on the Santa Fe work.
Q. Where was that?
A. On what they call their trans-continental line.
Q. Where does that run from?
A. That goes across through New Mexico.
Q. To what point?
A. A cut-off from Amarillo, Texas, to a point twenty miles below Albuquerque.
Q. How many miles was that?
A. A couple of hundred miles or so.
Q. When did you make that bid?
1394 A. Oh, maybe—I guess it was a year and a half ago.
Q. To what official was that bid submitted?
A. It was submitted to the Chief Engineer of the system at Chicago.
Q. Of the Santa Fe system?
A. Yes sir.
Q. What other bid have you made recently?
A. I don't know. I haven't made very many in the last year.
Q. In the last two or three years?
A. We bid on a great deal of work.
Q. Let me find out where it was, and on what work?
A. Well, I was interested in bids on the Western Pacific work.
Q. Where was that? Between what points? And on what road?
A. The Missouri Pacific.
Q. Whereabouts?
A. Out West, at Salt Lake; between Salt Lake and San Francisco.
Q. How many miles?
A. It was a very heavy piece of construction out there. I don't know just the number of miles.
Q. To whom did you make that bid?
A. The Chief Engineer of the work.
Q. Who was he?
A. I don't remember his name; I know him very well, too.
1395 Q. Where was his office?
A. His office is in San Francisco.
Q. And you can't remember his name?
A. Busby, I think it was.
Q. The Western Pacific is the name of the road?
A. Yes sir.
Q. What other bids did you make?
A. Oh, I don't know. I have been over a great deal of work. Some we bid on, and some we did not. I went down to El Paso, to

bid on that Southwestern line there, and I put in nearly a year, looking over the work, and making a bid on it.

Q. Any particular company to whom you made a bid?

A. I don't recall just now where we made bids.

Q. Can you recall any except the two instances in which you have made bids?

A. Oh, I didn't make the bid personally on the Western Pacific, but I was interested in the bid.

Q. It was made on your behalf, or on behalf of people you were interested in?

A. I had some interest in it.

Q. Anything of that kind, where bids went forth for you, where are they, if there are others?

A. I have a little interest in some work that is being done now.

Q. Where is that?

A. It is not in my name.

Q. Where is that?

1396 A. Union Pacific work, near Omaha.

Q. From Omaha to where?

A. It is a cut-off up there near Omaha.

Q. Between what points?

A. I really don't now. I have never been on the work. I have never been over this work myself, and have never seen it.

Q. Who is doing it? In whose name?

A. Knolley & Moodey Construction Company.

Q. Are you a member of that firm?

A. No sir, but I furnish them tools, steel shovels, and engines, and stuff, and furnish them the money to run the work; and I have some little interest in it.

Q. With whom is that contract made?

A. Through the Kilpatricks. We have a half interest with Kilpatrick Brothers and Collins in that work.

Q. And you were familiar with the bid on that work when it was put in?

A. Well, I didn't pay much attention to that myself.

Q. How much money have you in that?

Objected to as immaterial.

Objection sustained.

Q. How large an interest have you?

Objected to as immaterial.

The MASTER: That is not material.

The WITNESS: I have no objection to explaining to Mr. Hagerman the whole details of it.

Q. What other contract have you ever bid on or been in-

1397 terested in recently?

A. I have been interested in several bids, but I don't know very much about the details of them. I didn't go out in the brush and walk over the line, and bid on the work personally.

Q. Were you a civil engineer by profession at all?

A. No sir, I am a farmer by profession.
Q. In what sense do you use the word "profession"?
A. Farming is a profession, and I have worked on a farm a good many years.

Questions by Mr. O. M. SPENCER:

Q. You live in Kansas, I believe?
A. Yes sir, I do.
Q. You have lived there how long?
A. About thirty-seven or thirty-eight years?
Q. Have you ever lived in Missouri?
A. Yes sir.
Q. Where?
A. I lived out on 31st and Main Street.
Q. In Kansas City?
A. Yes sir.
Q. How many miles of road has the Burlington Company in Missouri?
A. I don't know.
Q. Couldn't you guess at it? Haven't you any idea?
A. I know they have a line between here and St. Louis, and between here and Hannibal, and up through St. Joe—but I have never computed the mileage. I know pretty well the country
1398 they run through.
Q. How many miles, do you know?
A. I cannot give you the number of miles.
Q. Have they mote than five hundred?
A. I don't know how many miles they have.
Q. You don't know whether it is five hundred or one thousand?
A. I couldn't tell, you how many miles they have.
Q. You have been testifying that the railroad could be reproduced, all they have in Missouri, at $25,000 a mile?
A. Because that is my judgment.
Q. I want to know, of course, whether that judgment is based upon any acquaintance with the railroad, or whether it is your general knowledge and judgment of railroads?
A. That is based upon the general topography of the country through which the Burlington runs, and the character of the Burlington roads I have seen, and I have seen their main lines.
Q. Now, you have talked about their main line?
A. Yes sir.
Q. Are you willing to testify as to what a road could be reproduced for in Missouri, without knowing where that road is located?
A. I am willing to testify, in a general way, that the main line of the Burlington in Missouri could be reproduced for $25,000 a mile.
Q. You have testified here that all the lines owned by the Burlington in Missouri could be reproduced, including the stations,
1399 including ballast, including the present condition of the tracks, for $25,000 a mile?
A. In my judgment, it could.

Q. Are you willing to swear that, without ever having seen the property?

A. I am willing to swear it, from what I have seen and know of Missouri, and of your property.

Q. Do you know where the Missouri road, the St. Louis, Kansas City & Burlington, is?

A. No sir.

Q. Are you willing to swear what that could be reproduced for?

A. I am willing to swear that the Burlington road through Missouri can be reproduced, in my judgment, for less than $25,000 a mile.

Q. Are you testifying only to that portion you have seen, that that can be reproduced, or what you have not seen?

A. I have a pretty good general knowledge of what your road is in Missouri, although I have not been over it. I know what the character of Missouri is; and I know what ties and rails cost.

Q. Do you know where the Chicago, Burlington & Kansas City road is located?

A. No sir, I don't know anything about the names of your various lines.

Q. Do you know whether that road is located in level country, or rougher country, than the Old Monroe line, that you testified about?

1400 A. No, sir, I don't know.

Q. You don't know the comparative topography of the two lines?

A. I don't know what lines you are talking about.

Q. I am talking about the Chicago, Burlington & Kansas City.

A. Between what points are you running?

Q. Don't you know?

A. You have so many names for your roads I don't know them.

Q. Do you know where Unionville, Mo., is?

A. Yes sir.

Q. Where is it?

A. It is up north near the Iowa line.

Q. In what county?

A. I don't know anything about your counties.

Q. On what railroad is it?

A. I have driven through Unionville. I think it joins—It is in the first tier of counties south of Iowa, and I think the Rock Island goes through it, or maybe the St. Paul. I don't remember what railroads go through it. But I have driven all through that country in a wagon.

Q. Do you know where the St. Joseph and Des Moines road is located?

A. I have no idea.

Q. Do you know anything about the topography of the country where it is located?

1401 A. If it is in Missouri, I do.

Q. Tell me wherein it differs?

A. Tell me where it is?

Q. It runs from St. Joseph northwest, and nearly east, to the Iowa line.

A. I have been all over that country. I have hunted all over it.

Q. Name some station or town along that line you have been through, or in that section of the country?

A. I don't remember the towns up there very much.

Q. Don't you remember anything about the cities or towns?

A. I remember about the topography of the country. I drove through there in a covered wagon.

Q. When?

A. In 1896.

Q. In what places did you stop?

A. I don't remember the towns. We hunted prairie chickens up there, and drove down—I don't know whether we were in this particular part.

Mr. HAGERMAN: It must have been a long time since you got prarie chickens in Missouri?

A. No, not so very long.

Mr. SPENCER:

Q. Do you know where the Iowa and St. Louis line is?

A. No sir.

Q. Do you know how that compares with the country through which the Old Monroe line goes?

1402 A. No sir.

Q. Yet you testified that the Iowa and St. Louis line could be reproduced, in all its present conditions, for $25,000——

A. I beg your pardon; I did not testify to that.

Q. Didn't you mean——

A. I testified that your lines in Missouri could be reproduced, as a whole property, based on the general character of Missouri, and on the cost of material.

Q. Mr. Stubbs, I am trying to get at the truth about this, whether you are testifying from actual knowledge of the condition of the country, or whether it is your knowledge as an expert, on the building of railroads: if you will answer that question, we will probably get along without much trouble.

A. I am not very expert, I don't think. I have been skinned a good many times. So I don't think I am very expert in dealing with the railroad.

Q. You are testifying now as an expert, aren't you?

A. I know what I have told you about, if that is expert testimony. I will swear to that.

Q. Do you regard yourself as an expert witness on the value of reproducing railroads you have never seen?

A. What do you mean by "expert"—extraordinary, do you mean?

Q. One who has special knowledge.

A. I regard myself as having absolute knowledge, unquestionable knowledge, about the things I am testifying about; if you want to call that "expert," or extraordinary—or inferior.

1403 Q. Do you know anything about the Tarkio Valley railroad?

A. Never heard of it.

Q. I wanted to ask you if you could name any station on the main line of the Burlington Road, east of Cameron? What is the next station to Cameron?

A. Lord, I don't know anything about it.

Q. Do you know where Macon City is?

A. It is a very familiar name to me.

Q. Is it in Missouri or Kansas?

A. It have heard it was in Missouri.

Q. Do you know anything about the character of the country there?

A. I couldn't tell you particularly about Macon City.

Q. That is part of the main line, which you have testified could be reproduced for $25,000 a mile?

A. Yes sir.

Q. Do you know——

A. May I explain my answer?

Q. Yes, I want you to.

A. If an expert horseman was going to testify about the weight of a horse, he couldn't tell you how much his tail weighed, or how much one foot weighed, or how much his head weighed; but he would have a pretty good general idea of the weight of the horse, and he would come within five or ten per cent. of it.

My testimony about this railroad proposition—I have told you the cost of the rails, and the cost of the ties, and the cost
1404 of grading, and the cost of the different parts of the railroad, so far as I know; and I have told you about taking into consideration the general character of the country, Northern Missouri—and I have been over it, I expect hundreds of times, across on the St. Paul, and the Rock Island, and the Burlington, and the Santa Fe—many, many times in the last twenty years—and my judgment is exactly what I have told you, and I believe it is right. Now, that is the best of my judgment.

Q. We want to see how good your judgment is, and that judgment ought to be based on some infor-ation.

A. That is the basis of it all. It is not a——

Q. Wait a minute.

Mr. HADLEY: He has a right to explain.

The MASTER: Oh, yes.

A. It is not any particular cut I have in mind to-day, or any particular fill, or any particular five or ten miles of road; but it is on the general character of the railroad that you own, and on the general character of the country through which you build, and I don't think it is off very much. And whatever it is, I believe the railroad has the advantage of it. That is my opinion.

Mr. SPENCER:

Q. You start in with that judgment, that the railroad has the advantage?

A. No sir, I say I made these figures higher by five, ten or fifteen

per cent. and in some cases twenty-five per cent. than I believe the actual cost is.

Q. Are you testifying to what you do not believe——

1405 A. On ties, for instance——

Q. You say——

A. May I explain?

Q. You say you have given this twenty-five per cent. higher than you believe it costs?

A. Let me explain. You must be fair to me, in a reasonable way. I think your ties have never cost you $1500 a mile in the State of Missouri. That is my candid opinion.

Q. Do you know anything about it?

A. I do know a good deal about it, not your particular ties, but about the general cost of railroad ties. I have put them at $2,000 a mile, in order to cover every contingency. I doubt if your grading—the average cost of your grading in Missouri—has been $5,000 a mile; I don't believe it has.

Q. I want to get at what your opinion is worth about that, and I want to know what part of the road—take one hundred miles of the main line, or sixty miles of the Hannibal road, which you say you have been over.

A. Which is the Hannibal?

Q. Don't you know which is the Hannibal?

A. I suppose it is this line leading out here, but you have so many names I don't know them. I presume it is this line out through Cameron.

Q. Yes, that's the Cameron branch, to Hannibal, and then from Cameron to Hannibal, is the Hannibal road?

A. That is the Hannibal and St. Joe?

Q. It is the same thing.

1406 A. You have a branch that runs off to St. Joe.

Q. No sir, the main line goes there, and the branch comes to Kansas City. Get that correct in your mind. Now, how much more, or how much less, would it cost to grade sixty miles of the Hannibal Road than it would cost to grade the Old Monroe line that you built?

A. The line between here and Cameron, you mean?

Q. Yes.

A. I think the grading between here and Cameron has not cost to exceed $5,000 a mile.

Q. I asked you how much more than to grade the Old Monroe line?

A. According to your estimate here, the grading and bridging on the Old Monroe was $15,000 for grading and bridging.

Q. You think it would cost three times as much to do the grading and bridging on the Old Monroe line as it would to do the grading and bridging on the Hannibal road?

A. I know what it cost to grade that. And I believe it has not cost $5,000 to grade this line, from here to Cameron.

Q. I am asking you how much more——

A. It is a mathematical problem.

Q. You say it cost $15,000 on the Old Monroe line?

A. No sir, your partner over there (indicating Mr. Hagerman) said it cost that. I said it cost approximately $1,500,000 to grade sixty-three miles.

Q. Do you know where the Keokuk & Northwestern Rail-
1407 road is?

A. No sir.

Q. Mr. Stubbs, when——

A. Where is it?

Q. When you have no knowledge of the number of miles that the Burlington has in Missouri, and no actual knowledge of the location of its lines, why is it that you are willing to swear what it will cost to reproduce them?

A. I have been between St. Louis and Kansas City——

Q. I have heard that.

A. On the Burlington. And I have been between Kansas City and Chicago. I know that those are the best lines you have got. They are your main lines. I know that the main lines cost a good deal more, as a rule, than the branch lines. And I am satisfied that these lines can be reproduced for less than $25,000, in their present condition. That is based largely upon the topography of the country through which your line runs.

Q. I want to know if you know what their present condition is?

A. I have seen it quite a little.

Q. Do you know anything about the number of stations they have?

A. No sir.

Q. How many stations are there between Cameron and Hannibal?

A. I don't know; I suppose they have a station every five, six, seven or eight miles.

1408 Q. Have you taken that into consideration in making your estimate?

A. Yes sir, that you have stations, that serve your——

Q. Will you please answer whether you are giving this opinion as an expert, based upon your general knowledge of construction of railroads, or whether you are doing it from any specific knowledge of the Burlington roads in Missouri?

A. I am giving this opinion on the knowledge I have of the cost of building railroads and the knowledge I have of the general topography of the country in Missouri.

Q. You don't know anything about the length of the Hannibal and St. Joseph Road?

A. No sir, I don't know about that.

Q. You don't know whether it is double track or not?

A. Well, it is double track out here a considerable ways.

Q. Out where?

A. Out from Kansas City.

Q. What distance?

A. To where the Rock Island leaves you—I know I have been over it a good many times.

Q. When did you conclude to testify as a witness in this case?

A. I believe the first I knew you had any hearing here was last evening, at perhaps nine o'clock, or maybe half past nine.

Q. You volunteered to come over here for General Hadley and give your experience as an expert?

A. Do you think so?

1409 Q. Well, I am just asking you whether that is true or not. Can you state whether that is true or not?

A. No, sir; that is not true.

Q. How did you happen to come? Have you been subpœnaed?

A. The United States Marshal told me he wanted me to come over here.

Q. Subpœnaed you as a witness?

A. Yes sir.

Q. You don't mean to say you didn't talk to the General before that?

A. General Hadley?

Q. Yes.

A. I told you just now that General Hadley spoke to me about that last night.

Q. No, you didn't tell me that. That is perfectly proper. You and General Hadley belong to the same political party?

A. I hope so; I am very proud of General Hadley, politically.

Redirect examination.

By Mr. HADLEY:

Q. Do you know of any other important railroad construction that has been done in the State of Missouri, except what you have done?

A. Yes sir, the St. Louis line was built, and I built only a part of it.

1410 Q. Then, I believe, there is a White River Branch of the Missouri Pacific?

A. Yes sir, I don't know how much of that is in Missouri.

Q. But with the exception of those three pieces of construction work, that is all you know of what has been done in recent years in Missouri?

A. I don't think of any other important work. Of course, there is a good deal of little peanut railroad building all over the country, that does not amount to much.

Q. Do you know anything about the cost of a bridge like that across the Missouri River here at Kansas City?

A. No sir, I can't give you that. I have been told by the engineering department——

Q. Unless you know of your own information——

A. No sir, I don't know.

Q. Does the construction of a low-grade line cost more than the construction of a line that has one or two per cent. grades on it?

A. In a heavy country it adds considerably—I might say enormously to the cost.

Q. And is that the element that added greatly to the cost of the Old Monroe line?

A. Yes sir. The Old Monroe line could have saved an enormous amount of money, if they had built that on a one per cent. grade, instead of five-tenths or six-tenths.

Q. Take the Burlington line, between here and St. Louis,
1411 or between here and Chicago, what do you know about the per cent. of those grades, and the grade of the old Monroe?

A. They have some very sharp grades, I think.

Q. So, to reduce that would, of course, necessitate reducing the grade, where great, and to fill in where there was a depression?

A. Yes sir, you would have to cut right through a hill, and make a low grade; if you have a one per cent. grade to build up on, you will pretty nearly crawl up over the top of the hills, without much of a cut. If you cut right through on a low grade, you take out of the cuts an enormous amount of material that you don't take out with a high maximum grade.

Q. Was the Rock Island work a low maximum grade?

A. I think eight-tenths, but through a very heavy country.

Q. You spoke of those concrete arches: that is what you mean by "bridging"?

A. Yes sir.

Q. Your figures did not include where it was necessary to put in a steel or an iron bridge?

A. No sir.

Q. But what Mr. Hagerman referred to as "concrete abutments"?

A. We put in the piers, and the abutments for the steel girders.

Q. And then for the bridging that you did, it would be where you could make a concrete arch?

A. Yes sir.

1412 Q. Where you make a concrete bridge?

A. Yes sir.

Q. You have been over this line—I don't know which one of its lines—but it runs from Kansas City to St. Joe, and runs through Parkville?

A. I have been up to Atchison over that.

Q. Is that a water level grade?

A. It is a pretty level grade.

Q. What would you say was the cost of grading that?

A. That would be a small cost.

Q. Would that be within $2,000.

A. Not the whole line.

Q. From here to Atchison?

A. I wouldn't put it as low as that. But perhaps between $3,000 and $4,000 a mile, for grading it.

Q. I believe in addition to your other occupations and professions, you were speaker of the last legislature of Kansas?

A. Yes sir.

Q. And you are a member of the present one—elected without opposition?

A. Yes sir; I was elected, I believe. I haven't heard about that. I had no opposition, I think I must have won.

1413 Recross-examination.

By Mr. HAGERMAN:

Q. You were a candidate for United States Senator, too weren't you?

Objected to by Counsel for defendant.

A. I have never said so to any human being.

Q. You were the man who got up a series of questions, to pledge each member of the legislature?

A. I drafted some questions that were presented to the members of the Legislature and the State Officers in Kansas, with reference to the primary election law, anti-pass law, a two cents fare, or as low a fare as conditions would justify——

Q. A reduction of rates?

A. —and the assessment of railroad property on the same basis as other property in Kansas. That is substantially the list of questions.

Q. What I am getting at is, you were the head of an organized movement to pledge the representatives in Kansas to what we call "The Stubbs Platform" and taking a very active interest in it: Isn't that a fact?

A. I am intensely interested in getting the railroads out of politics over there. I don't think it is hardly fair to call that "The Stubbs Platform." That does me too much honor. But I do have a part in it and I am very proud of it.

Q. And the issue you have been making in politics in Kansas both in the past and in the present since you have got so you don't have to do anything but farm, is a fight against the railroad, and——

1414 A. No sir, that is a very unjust statement.

Q. Isn't——

A. Let me answer that question. In Kansas we had some very rotten conditions, politically. The State assessors' office was operated on a graft basis. Our State Treasurer, contrary to law, kept money in the banks, and the State got no benefit from the interest. Our Charitable institutions were——

The MASTER: That is all very bad——

Mr. HAGERMAN: The sum and substance of it is——

Mr. HADLEY: We object to going into an investigation of Kansas politics. Mr. Hagerman started it.

The MASTER: It is getting a little warm in here, it seems to me.

Mr. HAGERMAN: The sum and substance of it is, that you are representing an anti-railroad movement over in Kansas now.

A. No, that is not true.

Gen'l HADLEY: You are trying to get fair treatment for the people of Kansas from the railroads?

A. Yes sir; I would like to explain——

The MASTER: That would be very nice Sunday reading, but it has no connection at all with this case.

The usual hour for recess having arrived, recess was here taken until 2 o'clock p. m.

1415 B. CORRIGAN, a witness of lawful age, being duly produced, sworn and examined, on behalf of the defendant, testified as follows, to-wit:

Direct examination.

By Mr. HADLEY:

Q. Please state your name?
A. B. Corrigan.
Q. You reside in Kansas City, and are now President of the Metropolitan Street Railway Company?
A. Yes, sir.
Q. That is the street railway company that operates the street railways here in Kansas City?
A. Yes, sir, the street railway and light company.
Q. What had been your business before becoming connected with the Metropolitan?
A. I built some railroads.
Q. How long have you been in the business of constructing railroads?
A. My first experience in railroads was in 1863, as a boy.
Q. What did you do?
A. Working as foreman for my brother.
Q. What line?
A. The first railroad work I was ever on was at Memphis, and between Kansas City and Olathe.
Q. What was the next railroad construction work you were connected with?
1416 A. Sedalia to Lexington, Mo.
Q. Were you contractor for that line?
A. My brother was. I was most too young to be a contractor.
Q. Name some of the important railroad constructions you have been connected with, and something of the order in which you were engaged in them?
A. I did not follow railroad building all the time. I went from one kind of contracting to another. I built some railroads in Colorado, Idaho, Arkansas, Indian Territory—outside of what I have mentioned—and in Missouri. I have built about four hundred miles of the Pittsburg & Gulf, which is now the Kansas City Southern.
Q. That is located in the State of Missouri?
A. Part of it.
Q. It runs to about Joplin, in the State of Missouri, south?
A. Yes, sir, it runs south of Joplin.
Q. And then it runs on, after diverging over into Kansas, and comes back to Missouri, down to the Arkansas line?
A. South of Joplin, it does not touch Kansas.
Q. What are the lines in Missouri, outside the old Fort Scott

and Memphis, which is now the Frisco, and the Kansas City & Southern?

A. That was in Kansas.

Q. Did you build any in Missouri?

A. No, sir, it started right at the State line here.

1417 Q. Have you constructed any other line in Missouri, outside the Kansas City Southern, or participated in any work done?

A. The road I mentioned, from Sedalia to Lexington.

Q. How long have you lived in the State of Missouri?

A. I have made this my home for pretty near forty years.

Q. Kansas City?

A. Yes, sir.

Q. Have you had occasion during that time to be familiar with the general topography of the country, from a railroad construction standpoint, north of the Missouri River, in the State of Missouri?

A. In a limited way only; riding in the trains; going over the road in the trains.

Q. You have been over the Burlington?

A. From here to Chicago, a number of times.

Q. The Burlington has a line, as I understand it, which extends from St. Joseph to Hannibal?

A. Yes, sir.

Q. Kansas City to Hannibal, joining the line at Cameron Junction, and then going down to St. Louis along the river?

A. Yes sir.

Q. I believe now they use the Alton line to Mexico, and then go down on their own line?

A. Yes sir.

Q. Have you been over the old line, known as the Hannibal and St. Joe?

1418 A. From here to Palmyra Junction, you mean?

A. Yes.

A. I have been over it a number of times.

Q. Have you been over the line from Kansas City to St. Joe?

A. Yes sir.

Q. And have you been north of St. Joe on the line running up to Council Bluffs?

A. I have been from here to Council Bluffs over the Burlington.

Q. Have you been on the line running along the Mississippi River, known as the Keokuk and Northwestern?

A. Yes sir, but I think it was always in the night.

Q. You have been from Palmyra Junction to St. Louis, over that part of the line, in the day time?

A. I think not.

Q. Take their branch lines, say one running from Carrollton up to Sedalia, and one from St. Joe up into Iowa—have you ever been over that?

A. If I have been over those lines, it is an accident; and I cannot recall now any times. Only their main lines.

Q. Your familiarity would be with the Council Bluffs and Hannibal to St. Joe: that is the part you are particularly familiar with?

A. Yes, sir.

Q. How recently were you engaged in the work of constructing the Pittsburg & Gulf? When was that built?

A. The last work I did for that Company, I think, was in 1897.

1419 Q. Have you built railroads since then?

A. Yes, sir.

—. ——.

A. Yes, sir, I built 160 miles of road for the Choctaw, through the Indian Territory and Arkansas.

Q. What kind of country was that you built through, and when was it you built that line?

A. We finished up there the spring of 1902.

Q. What would you call this country through which the main line of the Hannibal & St. Joe runs through Missouri?

A. From here to Palmyra Junction, or Hannibal?

Q. Yes.

A. Well, it is, so far as the cost of railroad construction is concerned, I think it would be above the average right in Missouri.

Q. You mean it would cost more than the average?

A. Yes sir, more than the average right in Missouri: I think it would.

Q. Would you call it a hilly country, or rolling country?

A. It is a rolling country.

Q. How does that country compare with the country through which you constructed the Kansas City Southern?

A. It is heavier work through Missouri than the Kansas City Southern was in Missouri, but not as heavy as the Kansas City Southern was through Arkansas.

Q. How does it compare with the work you did in Indian Territory and Arkansas, for the Choctaw road?

A. It is heavier work, I think than that. We followed a level part of the country there, as near as we could.

1420 Q. This question of grade cuts no figure in the cost of construction?

A. It has everything to do with it.

Q. Do you know the percentage of grade on the old Council Bluffs, Hannibal & St. Joseph line?

A. Only from hearsay. My oldest brother was working on lowering the grade there during the civil war. He worked a steam shovel there. I only know from hearsay from him.

Q. You know in a general way what it is?

A. I should say they have a grade there of one per cent, or over, in the roughest part of the country.

Q. Modern railroad construction aims at the lowest percentage of grade.

A. Yes sir.

Q. And the highest possible line?

A. Yes sir.

Q. What was the cost of constructing the Kansas City Southern in Missouri?

A. The Kansas City Southern, from out here at Grand View, where it started—They never built in the city *nad* haven't yet—they come in over the old Blair Road from Grand View—from there to Joplin I think I got the cost of that from Mr. Gentry, after the road was completed, and it cost $15,000 as turned over by the contractor.

Q. What did that $15,000 include?

A. The grading, the track-laying, and bridging—as it was bridged, you understand, then, toll bridges, etc.

Q. Did that include the right-of-way?

1421 A. I cannot say as to that, whether it did or not.

Q. It did include stations and switches?

A. I think so. I think it included the stations. Stations didn't cut much figure.

Q. They are not a very important element on any line?

A. Not on that line, as it was at that time.

Q. In an ordinary country station, that is not a very important element of cost?

A. No sir.

Q. What work did you do on that Kansas City Southern line?

A. I did the grading, the wood bridging, and masonry, what masonry they did—I built the masonry. The Company laid the track themselves.

Q. Do you remember what was the cost of doing the grading, masonry and bridging?

A. No sir, I can't separate that now in my mind. It was too long ago.

Q. Your idea is that including the grading, masonry, bridging, ties and rails—you are not certain about the right-of-way—but you think including the others, $15,000 would cover the cost?

A. That is my recollection of what Mr. Gentry told me it cost.

Q. What was the cost of construction of this Choctaw line you have spoken of?

1422 A. I never got any figures from the Company on that. I don't remember. I am not clear enough on that. My guess is, though, that road must have cost not less than $20,000 a mile.

Q. That is including everything?

A. As far as my work went.

Mr. HAGERMAN:

Q. Your work cost $20,000 a mile?

A. Yes sir.

The MASTER:

Q. I don't know that I quite understand you. Do you include the laying of the ties, and also the track, in this $15,000 a mile on the Fort Scott road?

A. On the Choctaw, do you mean?

Q. On the Kansas City Southern. The $13,000 a mile—that estimate I got from the General Manager of the Road, and not from my own work.

Q. And did that include rails and ties?

A. Yes sir, that is what he claimed.

Mr. HADLEY:

Q. He claimed that the road, complete, cost $15,000 a mile.

Mr. HAGERMAN: We object to that as the purest kind of hearsay.

Mr. HADLEY: You know what your work on the Kansas City Southern cost?

A. Yes sir.

Q. How much was that?

A. I could not give you that exactly.

Q. About what?

A. I should say the work I did for them, about $10,000 a mile for the part of the work I did.

Q. What part was that?

1423 A. I did the grading, and wooden bridges—trestle work we called it—and some masonry.

Q. Such masonry as was done?

A. Yes sir.

Q. Take this line, that runs up along the Mississippi, the east bank of the Mississippi, up to Iowa.

A. Which road is that?

Q. The Kansas City, St. Joe and Council Bluffs.

A. From here to Hannibal?

Q. From here to St. Joe, and up along the line of the river; you are familiar with that line, I believe you said?

A. Yes, sir, I have ridden over that line. Some of that is quite heavy work, rough work; and some is out on the river bottoms, which makes it expensive.

Q. What would be your idea of the average cost per mile for constructing that line?

A. I would like to get myself right on that. You mean the cost today?

Q. Yes.

A. The cost today, and the cost eight or ten years ago—there is very much difference.

Q. I recognize that fact. Then I say the cost today, that is, the cost in the course of the last year or two.

A. And taking their road in the condition it is today?

Q. Yes.

A. Oh, as I remember, the wooden bridges have all been replaced with masonry there,—I should say that road would cost $30,000 a mile.

1424 Q. $30,000?

A. I should say so.

Q. Take the line from here to Hannibal: what would be your idea of the cost to reproduce that?

A. Today?
Q. Yes.
A. I don't know what weight steel is on that road now.
Q. I don't.
Mr. SPENCER: It is the best we have.
A. I should say, if that has the kind of rail that they have been relaying with for the last three or four years, that road ought to cost as much as the other.

Mr. HADLEY:

Q. About $30,000 a mile?
A. Yes sir, not less than that.
Q. How much would you estimate that line from St. Louis to Palmyra Junction would cost?
A. I don't know anything about that. I have always been over that in the night.
Q. Do you know anything about any of their branch lines?
A. Very little, if anything.
Q. But, as a general proposition, branch line construction is not as well made as main line construction, is it?
A. Well, as a rule, they are not as particular about getting a low grade as they are on the heavy through line. But the fact is, every year they are building their roads better than they used to; they are improving. The branch road that was built fifteen or twenty years ago would not be very well built, and it would have to be
1425 rebuilt if there was much traffic on it. The branch road today is pretty well built.
Q. It has come to be considered economy in good railroad construction to build good branch lines?
A. That is it, exactly.
Q. What is your judgment as to the cost of construction of a line of railroad in a country such as the Burlington traverses in North Missouri, as you are familiar with it?
A. Today?
Q. Yes.
A. What you mean is a road that would parallel, say their road?
Q. Yes.
A. From here to Council Bluffs?
Q. Yes.

Mr. SPENCER:

Q. To reproduce it as it is today?
A. I would say it could not be done for less than $30,000 a mile.
Q. How would you divide those items, Mr. Corrigan?
A. Your steel would cost according to the weight of the steel that you put down. I am not very familiar with the weight of steel they have got, but no road is using less than eighty-pound rail nowadays. I should say your steel would cost $5,000 to $6,000 a mile. Ties have gone up more, perhaps, than any other part of the construction. Ties we used to buy for fifty cents, we are now paying sixty-two cents for them. I am in the market every day for ties.

Q. Where?
1426 A. Here in Kansas City.
Q. How much would you estimate for ties?
A. Their ties would cost $2,000 to $2,500 a mile.
Q. On the sixty-two cent basis?
A. Yes, sir, on the basis we are buying them now.
Q. And how much for the grading?
A. I would say $12,000 to $15,000 a mile.
Q. Does that include bridging?
A. Yes, sir, the bridging is quite a large item.
Q. You say that would include grading and bridging?
A. No sir, not your steel bridging; I mean your grading and culverts.
Q. And abutments?
A. Not your river abutments.
Q. Does that include what you call small stream bridges?
A. No sir, not the grading. We do not figure anything in except culverts and pipe drains.
Q. What amount would you add for that other bridging?
A. Well, now, it depends on how many streams there are in the road. I am making just a rough estimate, and not attempting to be accurate.
Q. I am just getting at your idea of the different elements?
A. You take bridges across a great many streams, take the bridge across the Missouri River, if you figure that in, and distribute it over the miles between here and Hannibal, it will add a great deal to the cost per mile.
Q. Have you an idea of the cost of bridges?
A. Yes sir.
1427 Q. Have you built bridges?
A. I have paid for building several.
Q. Can you give an idea of the cost to reproduce the Kansas City bridge across the Missouri River?
A. Well, no, I don't know that I could. To begin with, they wouldn't build a bridge today just like that; they would build a heavier bridge. But I have had estimates made of the cost of building bridges across the Missouri River for railroad traffic, and they figured it all the way from three-quarters of a million to nine hundred thousand dollars.
Q. You are familiar with the Thebes Bridge across the Mississippi River, south of St. Louis?
A. No sir.
Q. Are you familiar with the Merchants' Bridge?
A. Yes sir, I have crossed it.
Q. Do you know what was the cost of construction of that bridge?
A. No sir, I don't know how deep their foundations are. I have ridden across it on the train; that is all.
Q. What other elements would you add, beside what you have given: steel rails, ties, grading; and then you added the element of bridging. You say you cannot estimate that, because it depends upon the character of the country?

A. Not to attempt to be accurate.

Q. Can you give any idea of the cost of the right-of-way, and buildings on the right-of-way?

A. Oh, yes, today the right-of-way would cost a good deal of money. That is quite an important element. It would be worse than it was when that road was built.

1428 Q. I suppose it didn't cost much then?

A. The cost of right-of-way today would be a great deal.

Q. My understanding of your idea is that the line could be reproduced in the condition it is now in, in the place it is now in, at the present time, for $30,000 a mile—these lines you are familiar with?

A. That would be my guess.

Q. Would that be your opinion, as a railroad contractor?

A. Yes sir.

Q. You feel that you could take a contract for that figure, and get out all right on it?

A. I think so, yes sir.

Q. And that would include everything, the road in the condition it is now in?

A. I think so.

Q. Ballast, and bridges, and station-houses, and everything that is there. That would not include, I suppose, the terminals in the large cities?

A. Oh, no, I am not figuring on those.

Q. You are just figuring on the line outside of the large cities?

A. Yes sir, just through the country.

Cross-examination.

By Mr. HAGERMAN:

Q. Your idea about it is to take the main line of the Burlington, from here to Palmyra Junction, which you have passed over in the day-light, and to reconstruct that today would cost about $30,000 a mile?

1429 A. Yes sir.

Q. In what shape do you mean to leave that as to reconstruction? Just as it stands today, with all the work done on it?

A. Practically so, yes, sir.

Q. Would you include in that the bridges, or would you exclude them?

A. No, sir, I would include the bridges, outside of possibly the Missouri river bridges, or bridges over the Mississippi river, but you don't cross the Mississippi.

Q. Of course, there is a portion of the bridge to be charged to Missouri, for the bridge over the Mississippi.

A. I don't have in mind that bridge, but all other bridges I include.

Q. There is a bridge at Hannibal; there is a bridge at Quincy; there is a bridge at Kansas City, and there is a bridge at West Alton over the Missouri river: Do you include any of those bridges at all?

A. I didn't think of those bridges.

Q. So upon your estimate, whatever the cost of those bridges may be, ought to be added to the distribution per mile?

A. The pro-rate.

Mr. SPENCER: The Alton and the Hannibal bridges are no part of the Burlington.

Mr. HAGERMAN: The bridge at Alton over the Missouri river.

Mr. SPENCER: Yes.

1430 Mr. HAGERMAN:

Q. I will take back, then, the bridge over the river at Hannibal.

A. I have not attempted to put any value on the line from Hannibal to St. Louis.

Q. The Hannibal & St. Joe have a bridge across the river at Quincy; You don't include anything for that?

A. No, sir.

Q. Nor for the bridge over the Missouri at West Alton to St. Louis?

A. No, sir; because that is not on this line.

Q. It is below Hannibal. Now, there is another bridge over the Missouri river north of St. Joe, crossing to Rulo, Nebraska: Have you included that in your calculation?

A. It is not on your line between here and Council Bluffs.

Q. It turns right off there?

A. There is no bridge.

Q. You don't include that?

A. No, sir, I don't know anything about that.

Q. What did you do about the bridges over the Grand river, and the Charlton river?

A. I did not have them in mind.

Q. You did not include anything for any terminals in the large cities?

A. No, sir.

Q. The terminals in the large cities are very expensive?

1431 A. I did not have any terminals whatever in mind.

Q. You know, as a matter of fact, that the Burlington has quite expensive terminals in Kansas City?

A. Yes, sir.

Q. It would cost something up into the millions to acquire them?

A. Yes, sir.

Q. And in St. Louis probably several times more than what it would cost in Kansas City?

A. Yes, sir.

Q. And a very large sum to acquire them in St. Joe?

A. Yes, sir. But I don't know much about St. Joe terminals. I know that in Kansas City and St. Louis they are quite expensive.

Q. And probably there is no road in the State equally equipped with the Burlington?

A. I think that is true in Kansas City.

Q. And also St. Louis?

A. I believe it is.

Q. So, to make your estimate at all accurate, that ought to be apportioned to the line in some proportion, and included in your estimate?

A. I say, I am not putting any estimate on the terminals.

Q. Let me see about the equipment: You have ridden a good deal on the Burlington?

A. Yes, sir.

1432 Q. Do you know any road in the west that excels the Burlington in equipment?

A. Their equipment is very good.

Q. It is of the very highest class?

A. It is very good.

Q. Do you know any that is better?

A. I don't know. I think perhaps the Milwaukee has as good.

Q. I supposed the Burlington had put on a light equipment with the Milwaukee?

A. Maybe they have.

Q. What I am getting at is, the Burlington is equal to the best in this country?

A. Oh, yes, it is first class.

Q. Have you made any estimate to include equipment?

A. No, sir, because that is something that is never furnished by the contractors.

Q. But still, it goes into the value of the road as a proposition standing there?

A. We were discussing the road bed.

Q. And you have not made any detailed estimate at all about it?

A. No, sir, I have not attempted that.

Q. Take this Rock Island road running out here towards St. Louis 113 miles, which crosses the road—you know that country generally?

A. In a general way, yes.

1433 Q. How does that country correspond to the country leading north in Missouri; out towards Cameron, for instance, on the Burlington?

A. The country is pretty rough along towards Cameron, Brookfield, and all that country there. From here to Cumberland is not very rough, but if you get beyond that it is pretty rough country.

Q. How does this country out here for 113 miles compare with the country between here and Palmyra Junction?

A. When you get back from the bluffs, I should say there is not much difference in the country.

Q. It is a fair comparison?

A. I should say so; rolling prairie.

Q. Mr. Stubbs was here today and said that for the grading and bridging, counting nothing for the steel or structures, he was paid $30,000 a mile for grading and preparing for the bridges?

A. They must have held their road down to a pretty low grade. They held it down to low grade.

Q. Would you think that a fair or an unfair estimate?

A. I would not guess it any less than that.

Q. That leaves out a good many elements you included?

Mr. SPENCER: He said an eight-tenths grade.

A. That is a very low grade.

Mr. HAGERMAN:

Q. Speaking of grade, you spoke of one per cent grade on the Hannibal?

A. Oh, more than that. It was two per cent up to the time they cut the grades down.

1434 Q. What was it after they cut it down? What is it today?

A. I don't know, but they have at least a one per cent grade in a good many places there.

Q. Have you any idea how much the Burlington expended in doing that work?

A. Oh, I know they expended a good deal of money; as I stated a while ago, during the Civil war, and at the close of the war, my brother had charge of the work of cutting down the grades with a steam shovel.

Q. Recently the Burlington has spent large sums in doing that work?

A. Oh, I don't know.

Q. You don't know that they have been doing that work?

A. I know they have been doing the work, but I don't know what they have expended.

Q. They have reduced it to two per cent?

A. Yes, sir, and it cost twice as much to do it, as if it had been done at first. It costs twice as much to do it after the road is in operation, as to cut it down at first.

Q. Why is that?

A. Because the track is in your way. You have to go along and go after the engineer with your cut. The trains are in your way. And then you have to throw your track down into that low place, and cut the other track. Operation is interfered with, and that is a consideration.

1435 Q. You know where the Burlington in making the short route to St. Louis joins the Alton line to Mexico, what they call the old Monroe, the connection with the old road to St. Louis, from Mexico to old Monroe?

A. No, sir.

Q. It makes what we call the Chicago & Alton and Burlington road?

A. I have ridden over that all, but always in the night.

Q. That is a fair average of all along the Burlington, isn't it, from a railroad building standpoint?

A. After you get back from the river, anywhere you approach the Missouri river, as a rule you run into bluffs on both sides. After you get back from that, the country is pretty much alike.

Q. Take north of the Missouri, the country is practically very much alike?

A. Yes, sir. Except in places where there is a large wide bottoms, and then the bluffs go in away back.

Q. What I am getting at is, that is a fair average on the Burlington road at other places, from a railroad building standpoint?

A. I rather think so.

Q. I think Mr. Stubbs said that there they got a one-half per cent grade?

A. That would require heavy work.

Q. For his work, simply grading and putting up the culverts or bridges, including nothing for the iron structures, he got
1436 about $25,000 a mile; and the testimony shows that the actual cost of that, not counting anything for equipment or for terminals, or allowing anything on that account, was about $45,000 a mile; and that was done within the last two years: You would not gainsay those figures in any way, if that is what the Burlington actually paid for it, would you?

Mr. HADLEY: I object to that as calling upon the witness to pass upon the accuracy of the figures.

A. I never heard of the Burlington giving away any money.

Mr. HAGERMAN:

Q. You have not got down to the practical details of it?

A. No, sir.

Q. When were you first spoken to on the subject of testifying in this case?

A. This forenoon, a couple of hours ago.

Q. What you have been giving is your off-hand judgment, speaking of the situation in general?

A. Is it?

Q. In your $30,000 a mile, how much did you allow for right-of-way, if anything? Or have you taken that into consideration?

A. Only in a general way.

Q. I believe you said that is much more costly now than it used to be?

1437 A. Yes, sir, a right-of-way through a settled country, there is about twelve acres to the mile of right-of-way, where the farmers want pay for right-of-way, mile for mile, they want two or three hundred dollars an acre, in my experience—not for the land itself, but the damage. They rate it pretty high in a settled country.

Q. Would you or wouldn't you include that in your estimate of $30,000, or had you thought of it?

A. No, sir, I have not made any figures on this. I did, in a general way. I figured that, but I did not figure just what that would run up to.

Q. There are a good many side tracks and terminals of value in other cities and towns along the line of the road. Take places like Brookfield, Macond, Hannibal, and Louisiana?

A. I did not include anything but making a road through the country.

Q. What you included in your $30,000 per mile, is the naked

road connecting these cities, running through, from a construction standpoint, to turn it over for operation?

A. Yes, sir.

Q. After the contractor does that, and turns it over, what work is necessary to be done, and what money is it necessary for the railroad to spend, to get it in working condition?

A. They do a good deal of work after the contractor turns it over.

1438 Q. If you put the figure of $30,000 for making a road across the country, the railroad who took it at that price would have to spend a good deal of money to meet the question of the settling of his road bed?

A. They all do.

Q. How much should be added to your estimate?

A. It all depends upon how the company is situated financially as to how much money they spend. They spend a good deal of money right along.

Q. There should be some substantial sum added to it on that account?

A. Yes, sir.

Q. The fact is, these railroads are ballasting and improving all the time on these through roads?

A. After the road is turned over, the company goes to work and puts in terminals and buildings and warehouses, in the towns. They are putting up depots better than they used to. These are not covered by the first estimate at all.

Q. And they are putting in extra side tracks and passing tracks?

A. Yes, sir.

Q. And you would not be willing to give us an estimate in arriving at the figure, as to how much should be added to your $30,000 a mile?

A. I could not give an intelligent answer.

Q. What work was it you did on the Pittsburg & Gulf?

1439 Did you do any part of the Missouri work from Grand View down?

A. Yes, sir.

Q. Whatever work you did, you got about $10,000 a mile for it?

A. That is my recollection.

Q. Part of that was already a graded road, wasn't it?

A. Not this side of Joplin.

Q. I thought there was some old road there?

A. Not this side of Joplin.

Q. That was beyond Joplin?

A. Yes, sir.

Q. For what part was this $10,000 a mile paid you?

A. I was building north of Joplin, across the prairie.

Q. That was up in the prairie country?

A. Yes, sir.

Q. What work was it you did there?

A. The grading, the wooden bridging, commonly known as trestle work, and some masonry.

Q. What other work was done after you turned that part of it over?

A. They had to ballast it.

Q. And lay the track?

A. Lay the track and then ballast it.

Q. And build bridges?

A. Build steel bridges.

Q. And the railroad company had to acquire the right-of-way?

1440 A. They furnished that.

Q. Your figure did not include anything of that kind?

A. It did not include right-of-way: The company always furnishes that.

Q. What would it cost today to do the work which you did then for $10,000 a mile?

A. The cost of everything, I think, that enters into railroad construction—steel was very low then, ties very low, and labor very low. We were doing the grading there for fourteen cents a yard, which would now cost about twenty-two.

Q. So the prices today would be considerably more for your part of the work—about what per cent, 50 per cent more?

A. No, sir.

Q. 33⅓ per cent more?

A. Thirty per cent.

Q. Thirty per cent more?

A. Yes, sir.

Q. The work you did down in the Indian Territory was likewise grading and preparing wooden bridges; you did no track laying there?

A. Yes, sir, I laid the track.

Q. Did they furnish the rail?

A. Yes, sir, and the couplings and spikes.

Q. Your work there was grading and laying the track?

A. Yes, sir.

1441 Q. What part was the bridges?

A. All the wooden bridges.

Q. For that work what would they pay you per mile?

A. My recollection is, about $20,000.

Q. And when was that?

A. I finished up in the spring of 1902.

Q. And upon the basis of prices today, 30 per cent ought to be added to that figure, ought it not?

A. Prices began to go up then—yes, it ought to, because it was after I took the contract that prices commenced to go up. Of course prices have gone up since that a good deal.

Redirect examination.

By Mr. HADLEY:

Q. What did that $20,000 per mile on the Choctaw line include?

A. Grading, track laying, but not furnishing the steel.

Q. Ties?

A. No sir, the company furnished the ties. It included the labor of laying the track.

Q. It included then, everything except the ties and steel?

A. Yes, sir, and steel bridges.

Q. And the cost of that was $20,000?

A. About $20,000.

Q. The character of soil through which a railroad is built, determines to a great extent the cost of construction, doesn't
1442 it?

A. Oh, mainly.

Q. You are familiar with the character of soil through which this Rock Island road was built, south of the Missouri river, that it required blasting?

A. My judgment would be that they ran into a good deal of lime stone.

Q. That would be heavier construction than north of the Hannibal & St. Joe?

A. There is a good deal of rock down there. In the bottoms of their cuts they ran into rock there.

Q. What would you say about its being heavy construction work, this work on the Rock Island?

A. It is at least up to the average, from what I know of it.

Q. What do you mean by that? The average of what?

A. The average of Missouri roads.

Q. Isn't there a difference between south of the Missouri river compared with north of the Missouri river, in that regard?

A. There is, if you keep close to the river. After you get back from the river bluffs, there is not so much difference.

Q. When you get back from the river bluffs in south Missouri, you get into the Ozarks, don't you?

A. There is a part of the country which is just rolling prairie country, between the river bluffs and the rough country to
1443 the south. That is as I remember the country.

Q. That would be so south of Versailles; but how is it on the other side of Versailles?

A. That is rough country.

Q. That is rough country there?

A. Yes, sir, very rough country.

Q. The per cent of grade you say enters into the cost of construction?

A. Yes, sir.

Mr. HADLEY: What were those figures upon the Rock Island, Judge Spencer?

Judge SPENCER: Eight-tenths per cent.

Mr. HADLEY:

Q. How does an eight-tenths per cent grade compare with a line that had a one and a half per cent grade? What would the difference in cost to be added on account of the low grade be?

A. That low percentage of grade only affects the grade, you understand. Two-tenths I should say would affect the grading 25%.

Q. It would add 25% to the cost?

A. Yes, sir, through a rough country it would. But that does not enter into the cost of the rest of the work, the bridging, and so forth.

Q. I understand that. Would it also enter into the increased number of fills, and the size of the fills?

A. The heighth of the fills and their width.

Q. So it would affect the matter of cutting down the fills
1444 and raising the depressions?

A. Yes, sir, very much.

Q. Did you figure, in estimating the cost of reproducing the Hannibal line, with which you are familiar, the added expense that has been incurred by reducing the grades at the wrong time?

A. My statement was, what the road could be duplicated for today.

Q. In its present condition?

A. Yes, sir. I only incidentally mentioned that it would cost more than it would at first. But my estimate was what it could be done for and get it down to maximum grade of one per cent now.

Q. That would be to put it at a maximum grade of one per cent, as it is now?

A. As I believe it is. I am not certain, but I think it is about one per cent.

Q. I thought I understood you to say that it included the railroad in its present form, ready for operation?

A. Yes, sir.

1445 E. M. FISHER.

Direct examination resumed.

By Mr. S. B. LADD:

Q. How does the tariff of the Burlington road in Missouri compare with tariff rates of the same road in the State of Illinois?

A. They are about 20 to 25% higher than in Illinois.

Q. Have you them before you, or have you some comparative statements?

A. I have some comparative statements of the maximum rates in Illinois and Missouri, and as near as I could find out from the tariffs of the Burlington, the Burlington tariffs are about the same as the maximum tariffs in Illinois.

Q. You have seen the tariffs?

A. Some of them.

Q. You have had access to the Burlington tariffs?

A. Those applying to Missouri, I have.

Q. And Illinois, too?

A. Yes, sir, Illinois, too. Part of those are in Illinois, but not all of them.

Q. I wish you would illustrate that by some specific cases. Pick out any you like. What I mean is, charging rates of the Burlington in Illinois as compared with the charging rates of the Burlington in Missouri, on the same articles, for the same distances?

—. ——.

1446 Q. What are the rates on first class freight for a distance of 50 miles, on less than carload freight?

A. The rate for Missouri is 30 cents
Iowa 20 "
Illinois 23.3 "

Q. That is per hundred pounds for 50 miles?

A. Yes, sir.

Q. What are the rates for first class freight, less than carload lots for 100 miles?

A. The Missouri rate is 40 cents
Iowa 24 "
Illinois 30.8 "

That runs about in the same ratio on all four classes.

Q. Now, take it for 150 miles on first class freight?

A. The Missouri rate is 50 cents,
Iowa 32 "
Illinois 36.1 "

The MASTER: You are now reading the Burlington schedule of rates?

A. It is the schedule of rates in the various States.

Q. Made by the Burlington?

A. Not in all cases, but in most cases.

Mr. HADLEY: These are the maximum rates.

The MASTER: Are these maximum rates established by law, or are — the rates charged by the Burlington?

A. These are the miximum rates established by law.

1447 Mr. LADD:

Q. I am asking you for the maximum rates charged by the Burlington?

A. I did not have those in all cases.

The MASTER:

Q. What have you been giving in the last three or four answers?

A. These are the maximum rates in the various States.

Q. You mean, fixed by law?

A. Yes, sir. In what I could get hold of, of theirs, in Illinois they conform to the State rate as they have it now.

Mr. HADLEY:

Q. And is the same thing true of Missouri?

A. Very largely.

Mr. SPENCER:

Q. The legal rate in Missouri is higher?

A. It is in some cases.

Q. The actual rate charged in Missouri is the same as the maximum rate in Iowa and Illinois?

A. Yes, sir, in most cases.

Q. So that what we are really getting, is the same rate that is in force in Iowa and Illinois?

Mr. HAGERMAN: For instance, one of the claims in this case is, that we ought to charge up to the maximum rates.

Mr. HADLEY: I object to that.

The MASTER: There seems to be a misunderstanding be-
1448 tween the Master and the witness, as I understood the interrogatory propounded by Mr. Ladd; hence, I interposed the question I did. Now you may proceed with the further examination.

Mr. HAGERMAN: I want to see if I understand this aright——

Mr. LADD: I am going to withdraw these questions. It is not your turn, Mr. Hagerman.

Mr. HAGERMAN: I am asking the Master.

The MASTER: Let the examination go on, and complainant's counsel can develop it in the cross examination.

Mr. LADD:

Q. I want you to make a comparison if you can, as to the charging rates of the Burlington in Illinois, Missouri, and Iowa.

How did the charging rates of the Burlington in Illinois compare with the rates established by law in that State?

A. They come very near it, under the rates I quote here; these are the ones that went into effect in Illinois on the 1st of July. I looked over a number of tariffs over there, and made comparisons in a good many cases. In some cases they are lower, but as a general thing they come very close to these rates.

Q. How about Iowa?

A. The same is true of Iowa.

Q. How is it in Missouri? How do the charging rates in
1449 Missouri compare with the rates fixed by law on the different classes of freight?

A. Take this tariff here, for instance (indicating)——

Mr. SPENCER: There is no maximum law in Missouri the same as in Iowa and Illinois.

A. There is a Commissioners' rate that is considered as the maximum rate.

Take a distance of 50 miles on grain, for instance. Wheat, the C. B. & Q. has a tariff of five cents; the rate as established by this Act of 1905, we will say is five and half cents. They run it different distances.

The Iowa rate on that same commodity is 6.3 cents on one class, and on other grain than wheat five and a quarter cents; about the same as the Burlington tariff, and a little less than the rate made by the Act of 1905.

Q. I am not asking about the commodities particularly mentioned in the Act of 1905. I am talking about other freight. Have you the mileage rates?

A. That is what I am looking for now. I think I have.

Q. Mr. Fisher, do you know how the mileage tariff of the Burlington, in this State, compares with the Commissioners' tariff?

A. I have not made a specific comparison of all of them, but just in a few instances.

Q. We will take that up later.

Suppose in 1904 the company had charged up to the amount allowed by the Act of 1905, assuming that the Act of
1450 1905 had been in force during the year 1904, how much more money would they have taken in on the freight they actually carried?

A. On the commodities of the Act of 1905?

Q. Yes.

A. $71,977.44.

Q. Now, on page 2 of complainant's Exhibit 1, it is stated that the total diminution in revenue during the year 1904, if the Act of 1905 had been complied with, would have been $173,770.44.

A. Yes, sir.

Q. If they had charged up to the rates allowed by law, that amount would have been $71,977.44 less: Is that right?

A. Yes, sir, that is right.

Q. The diminution of revenue would have been that much less?

A. Yes, sir, $101,793.

Mr. SPENCER:

Q. If they had charged up to the full rate allowed by law under this new Act?

A. Yes, sir. $101,793.00 instead of $173,770.44.

The MASTER:

Q. Do I understand, that instead of there being a diminution of $173,000.00, if the Act had been complied with on all the articles specified by the Act, there would have been in fact $173,000 more than they did receive?

A. It would be $101,793.

The MASTER:

1451 There still would be a diminuition of $101,793? That is according to your estimate?

A. Yes, sir.

Mr. LADD:

Q. How much of this $173,770.44 was on grain?

A. $13,973—that would be altogether $22,339.18.

Q. That is, they would have received that much more on grain if they had charged up to the rates fixed by the Act of 1905?

A. Yes, sir.

Mr. HAGERMAN:

Q. On page 3 of this Exhibit 1, Mr. Sturgis lists the different commodities of which the $173,770.44 is made up?

A. Yes sir.

Q. Now, what do you mean? Where did you get the $71,977 to deduct: from any of those items?

A. From all those items, practically that, with the exceptions of—Well, practically all the items.

Mr. SPENCER:

Q. We charged less in 1904 than this *l*ew law authorized us to charge, $71,977.44, is that it?

A. Yes, sir, that is it.

Mr. LADD:

Q. Now how was it in 1905?

A. In 1905 there would have been an increased revenue of $44,522.46.

Q. That is to say, the diminution in revenue would have been $44,522.46 less than the $171,122.07, as shown on page 2 of Exhibit 1: is that it?

A. Yes, sir.

1452 Q. How much of this was on grain?

A. $5,513.07.

Q. Something has been said here—I believe it is a conceded fact—that in the $541,660.06, and $705,347.27, as receipts for the year 1904, for mail, express, etc., there is included some switching?

A. Yes, sir.

Q. How much switching is included in that?

A. In 1904 there was $137,959.55 included.

Q. What criticism, if any, have you to make on including that amount under the head of "Mail, express, etc."?

A. I think that ought to be included in freight earnings.

Q. Why?

A. For the reason that it is all handled by the freight employees of the railroad—that is to say, the employees who handle the freight. And in arriving at the figure of expense for handling any particular class of traffic, as compared with earnings, those earnings should be considered, their proportion of it.

Q. In your opinion, where do they belong, instead of in that item?

A. They belong in connection with the freight earnings of the road, instead of the passenger, to arrive at any division of expense, as compared with earnings.

Q. How do you divide that item of $137,959.55 between local and interstate? Have you undertaken to do that?

A. No, sir, that is all State or local business, that $137,-

1453 959.55: that is apportioned on the basis of where the switching was performed.

Q. Where do you think that $137,959.55 should be placed?

A. It is hard to place it, because from one standpoint there is some interstate business that produces the revenue, and in arriving at the figures I gave yesterday I used the basis of the local freight earnings to the total freight earnings of the State, and used those figures. That is using a very conservative estimate, I think, for the amount set aside for local freight business.

Q. Did you divide it up between local and interstate freight business?

A. I did, in that way.

Q. How much did you assign to local?

A. $25,756.97.

Q. And how much to interstate?
A. It would be the balance of that.

Mr. HAGERMAN:

Q. The $137,959.55 you take out of local mail, etc., and put into local freight?
Mr. LADD: The $137,959.55 is included in the local and interstate mail, express, etc.
Q. You add, then, how much to earnings from local freight?
A. $25,756.97.
Q. You add that to the $1,525,158.92: is that right?
A. Yes, sir.
Q. And how much do you add to the earnings from interstate freight?
A. That would be $112,202.58.
1454 Q. When you add that amount to the local freight, what does it total?
A. That would make——
Q. Haven't you it figured?
A. No, sir. It would be $1,550,000 odd dollars.
Q. What have you to say about the same item of switching for the year 1905?
A. The same thing. The same would apply in both years. The amount in 1905 would be $23,364.55.
Q. Is that the total amount of the switching?
A. The total amount of the switching is $126,705.78.
Q. That is included in the two items of local and interstate mail and express for 1905, in this statement?
A. Yes, sir. That $126,000 is included in the mail and express, local and interstate, in the statement rendered by the C. B. & Q.
Q. How do you divide that between local and interstate?
A. I divide that on the basis of local freight earnings to total freight earnings in the State.
Q. How much of it do you assign to local freight earnings?
A. $23,364.55.
Q. That is, you add that amount to the $1,649,665.73: is that right?
A. Yes, sir, that is right.
Q. Have you the balance, what it is?
A. I haven't that figured.
Q. Whatever the balance is, you assign it to freight earn-
1455 ings, do you?
A. Yes, sir.
Q. You said something yesterday, but it was not followed up, about demurrage or car service—I believe you use those terms interchangeably?
A. Yes, sir.
Q. You said something about demurrage or car service being included in mail, express, etc., earnings, as shown by this statement: is that correct?
A. That is correct.

Q. How much did that car service amount to for the year 1904?
A. It amounted to $32,808.50.
Q. How did you divide that up?
A. On the basis of the local freight earnings to total freight earnings, assigning that portion to the local freight earnings.
Q. How much did you assign to the local freight earnings?
A. $6,125.35.
Q. And the balance of it to interstate?
A. Yes, sir, to interstate.
Q. Is there a similar charge for 1905?
A. Yes, sir, there is.
Q. What does that amount to?
A. $21,059.21.
Q. On this statement, that is included in the mail, express, etc. earnings, is it?
1456 A. Yes, sir.
Q. Did you divide that up?
A. I did.
Q. How much did you allow to local freight earnings?
A. $3,879.63.
Q. And the remainder to interstate?
A. Yes sir.
Q. Why do you think that car service, or demurrage earnings, ought to be included in freight earnings, instead of placed where it is, under the head of "Mail, express, etc."?
A. For the reason that practically all the service in connection with the handling of that business, the expense is assigned to the expense of handling freight traffic. And in arriving at the net earnings from the handling of freight traffic, a portion of those earnings should be included.

The MASTER: If I understand you, Mr. Ladd, while no exception is made to the item of receipts for the years 1904 and 1905, from mail express, etc., yet, nevertheless, a portion of those receipts should be credited to receipts from local freight?
Mr. LADD: That is what I think, and therefore, it affects the question we are now investigating.
Mr. HAGERMAN: In other words, it should not have gone into that "Mail, express, etc." account, but into the freight account?
Mr. LADD: Yes.

Q. What is this demurrage or car service?
A. It is an amount charged for the detention of cars.
1457 Q. What kind of cars?
A. Freight cars.
Q. Charged to whom?
A. To the shippers; either the consignor, or the consignee. If they place in a car for loading, and it is not loaded in time, they make a charge for it; and if they place a car for unloading, and it is not unloaded in the time provided by the rules, they charge for that service.

Mr. HAGERMAN:

Q. Do you use the term "car service" in the same sense as the word "demurrage"?

A. Yes sir.

Mr. LADD:

Q. Yesterday, in speaking about the Replacement Account, you said that you had cut out from the operating expenses, as shown in the statement rendered by the Company here, amounts set apart to the account of the Kansas City bridge, $550,000, and $100,000?

A. Yes sir.

Q. Now, there were some other items in 1904, Repairs to Locomotives, Repairs to Freight Cars, Repairs to Passenger Cars, which were included in the statement of the Company as to its operating expenses, and were of a similar nature to those amounts set apart for the Kansas City bridge?

A. Yes sir.

Q. Did you exclude them, or allow them to remain?

A. I allowed them to remain.

Q. What did they amount to?

A. In the year 1904, they amounted to $80,474.00; and in the year 1905, they amounted to $367,418.75.

Q. Can you give us a comparison of the rates on corn
1458 in Illinois, and Iowa, and Missouri, as charged by the Burlington?

The MASTER:

Q. As charged by the Burlington in these several states?

Mr. LADD: Yes.

A. I cannot give it on the Burlington in Illinois; I can on the Illinois Central in Illinois; I can on the Burlington in and out of St. Louis.

Q. On corn or oats, either?

Q. On corn, the Burlington's rate to St. Louis, under their tariff No. 3308 is $42.00 for one hundred miles.

Q. $42.00 for 100 miles?

A. Yes sir: That applies to St. Louis.

Q. That is a car-load?

A. Yes sir, a carload of 60,000 pounds.

Q. How much is it in Iowa for the same distance?

A. $40.50.

Q. How much is it in Missouri?

A. That would be $42.00 in Missouri also. That applies to both States, that rate.

Mr. HAGERMAN:

Q. The same in Missouri and in Illinois?

A. Yes, sir, on that commodity.

Mr. LADD:

Q. How is it on wagons?

A. It would be in Missouri and Illinois, under C. B. & Q. tariff, $20.00 a carload for a minimum weight of 20,000 pounds.

Q. Where would that be?

1459 A. Illinois or Missouri, either on the C. B. & Q.

Q. What is the rate in Iowa?

A. $18.00 in Iowa.

Q. How is it on salt?

The MASTER:

Q. That is one of the affected articles in this Bill, isn't it?

Mr. LADD: Yes.

A. The C. B. & Q. has a tariff of $20.00.

Q. $20.00 for what?

A. $20.00 for a carload of 40,000 pounds.

Mr. HAGERMAN:

Q. Where?

A. C. B. & Q. tariff D2175.

Mr. LADD:

Q. What State is that?

A. In Illinois and Missouri.

Q. The same in Illinois and Missouri?

A. Yes sir.

Q. How is it in Iowa?

A. I haven't the C. B. & Q. tariff on that. The Iowa State rate is $23.40.

Mr. SPENCER: Three dollars higher in Iowa.

Mr. LADD:

Q. Can you give a comparative statement of the mileage rates charged by the Burlington in Illinois, and Missouri, and Iowa, on articles not mentioned in the Act of 1905?

A. No sir, I haven't that here. I would have to get it out of the tariffs here. I doubt if I have the C. B. & Q. tariff applying locally to Illinois.

Q. What comparisons have you made?

1460 A. I have comparisons between proportional amounts of through rates and local rates.

Q. Have you the comparisons between the maximum rates fixed by the Commissioners in the different states, or by law?

A. Yes, sir, I have the comparisons between the maximum rates fixed by the Commissioners in the various states.

Q. Do the mileage rates, that is, the rates except between terminals, in Missouri, correspond in any degree to the Commissioners' rates as fixed?

A. The Commissioners' rates are based upon the mileage. Yes sir, they compare very closely.

Q. How do the Burlington's charging rates compare with the Commissioners' rates?

A. They compare very closely. I did not make a memorandum

of all of them, but I looked into a good many of them to see how they would compare, in a general way. I understood that the Iowa rates of the C. B. & Q. were practically the State rates.

Q. How is it in Illinois?

A. Very close to the State rates now, as compared with the rates that went into effect on the 1st of July of this year, in Illinois.

Q. Compare some of the rates as fixed by the Commissioners, or by the law, in these three states?

A. Take a distance of twenty-five miles. Missouri would be 24 cents on first class freight.

Q. 24 cents per 100?

A. Yes sir.

1461 Q. How much is Illinois?

A. Illinois would be 16½ cents.

Q. And Iowa?

A. 17 cents.

Q. What is the distance there?

A. 25 miles.

Q. Take it for 100 miles ?

Judge SPENCER:

Q. Are you referring to the rates charged by the Burlington, or the rates fixed by law?

A. These are the ones fixed by law.

Judge SPENCER: Mr. Ladd, would you object to him giving the rate charged by the Burlington, if he knows it?

Mr. LADD: Certainly not.

A. I understand that in all these cases the Burlington charges the same rates in Iowa as the Commissioners' rates.

Q. In Iowa?

A. Yes sir.

Mr. HAGERMAN: I understand there is no maximum in Iowa, but whatever the rate is, you have to charge it—neither more or less.

A. Yes sir, they fix the rate there, absolutely.

Mr. LADD:

Q. How is it in Illinois?

A. In Illinois the tariffs conform very closely to the new rates as put into effect in Illinois.

Q. Take one hundred miles on that same article, first-class freight?

A. The Missouri rate is 40 cents; Iowa, 24; Illinois, 30.8.

1462 Q. Take 150 miles?

A. The Missouri rate is 50 cents;
Iowa, 32 cents;
Illinois, 36.1 cents.

Q. Take it for 200 miles?

A. The Missouri rate is 60 cents;
Iowa, 40 cents;
Illinois, 39.1 cents.

Q. The second class freight for 50, 100 and 200 miles?

A. The second class for 50 miles would be:
Missouri, 25 cents;
Iowa, 17 cents;
Illinois, 18.8 cents.
Second class freight for 100 miles would be:
Missouri, 33 cents;
Iowa, 20.4 cents;
Illinois, 24.8 cents.
Second class freight for 150 miles would be:
Missouri, 40 cents;
Iowa, 25.3 cents;
Illinois, 28.6 cents.
Second class freight for 200 miles would be:
Missouri, 47 cents;
Iowa, 30.2 cents;
Illinois, 31.6 cents.

Q. Now, what is your next class of freight, third class?

1463 A. Yes sir, third class.

Q. Take it for the third class on the different distances?

A. Third class freight for 50 miles would be:
Missouri, 20 cents;
Iowa, 13.34 cents;
Illinois, 15.8 cents.
Third class freight for 100 miles would be:
Missouri, 26 cents;
Iowa, 16 cents;
Illinois, 19.9 cents.
Third class freight for 150 miles would be:
Missouri, 32 cents;
Iowa, 19.5 cents;
Illinois, 22.2 cents.
Third class freight for 200 miles would be:
Missouri, 36.5 cents;
Iowa, 23 cents;
Illinois, 24.4 cents.

Q. Is there a fourth class?

A. Yes sir.

Q. In a general way, what does fourth class freight comprise: what is the character of that freight?

A. It is less than carload shipments.

Q. What kind of stuff?

A. All kinds of merchandise, miscellaneous merchandise.

1464 The MASTER:

Q. Is it the same in these various states, the classification you have given?

A. Not altogether. There is some difference in the classification, but in preparing this, I have harmonized the classes, so as to make them represent the same thing. It is practically all under the Western Classification that governs nearly everything in the three states.

Mr. LADD:

Q. So far as you have gone, they are substantially the same, are they, in the different states?

A. Yes sir.

Q. Are those classifications agreed upon by the different railroads in the West—it is what is called "Western Classification"?

A. Yes sir.

Q. Go to the fourth class, and make the comparison, just as you did before?

A. Fourth class for 50 miles would be:

Missouri, 15.5 cents;
Iowa, 10 cents;
Illinois, 11.3 cents.

Fourth class freight for 100 miles would be:

Missouri, 20 cents;
Iowa, 12 cents;
Illinois, 15 cents.

Fourth class freight for 150 miles would be:

Missouri, 25 cents;
Iowa, 15.3 cents;
Illinois, 18.1 cent.

1465 Fourth class for 200 miles would be:

Missouri, 27 cents;
Iowa, 18.6 cents;
Illinois, 19.6 cents.

That is all of the less than carload classes. There are only four classes handled in less than carload lots.

Mr. HAGERMAN: All those are in less than carload lots, are they?

A. Yes sir.

Mr. LADD:

Q. On the mileage basis, those are?

A. Yes sir; those are on the mileage basis. The rest of the classes, from five to ten, are in carloads.

Q. The articles in those four classes, if I understand it, are not affected by this Act of 1905?

A. No sir, they are not affected by that Act at all.

Q. Mr. Fisher, do you know who loads and unloads car load lots of merchandise or freight?

A. You mean as between the shipper and the railroad?

Q. Yes.

A. Well, it is the rule for the shipper to load and unload carload business. There may be an exception in some instance, or some extraordinary case, where the railroad would do that, but it would be very rare. The consignee or the consignor does the *un*loading and unloading in carload shipments.

Q. At large and small towns, is that true?

A. In both cases, yes.

The MASTER: I understand you, Mr. Fisher, that none
1466 of the articles embraced in this Act of 1905 are included in any of the classes, 1, 2, 3 and 4, of which you have just been testifying?

A. Yes sir; that is right. Unless they would be in less than carload shipments, which is not affected by the Act of 1905.

Q. Have you made a comparative statement of the charges authorized, or the charges actually made, in Iowa and Illinois, with the Act of 1905 in Missouri—with the articles mentioned in that Act?

A. Some of them only. That is, the State rates, the rates authorized by the states. I have that for all three states, on nearly all those articles, for the different distances applicable just as the Act of 1905 is.

Mr. LADD:

Q. All these figures which you have given in reference to earnings from different sources, and revenue, you have taken from the books of the Burlington Company, haven't you?

A. Yes sir; it is rather more of a verification of their statement, it is practically the same, except with the exceptions as noted.

Q. I refer particularly to the matter of switching and car-service, and the amounts that might have been realized if they had charged up to the Act of 1905?

A. Yes sir.

Q. Such amounts as that, have you acquainted Mr. Sturgis, the Auditor of the Company, with the result of your investigation?

1467 A. He handed me that statement himself, and I verified it.

Q. He has been familiar with these figures all the time?

A. Yes sir.

Q. In your investigations have you ascertained or learned whether the bridge across the Mississippi River at Hannibal belongs——

Mr. HAGERMAN: That is a separate bridge company. I used the word "Hannibal," but Judge Spencer corrected me, and said it was not a part.

Mr. LADD: How about the bridge at Rulo?

Mr. HAGERMAN: I don't know about that.

Mr. LADD:

Q. Do you know about the Rulo bridge?

A. It is up in the northwestern part of the State.

Q. Do you know whether it is the property of the C. B. & Q.?

A. I don't know.

Q. How about the Quincy bridge?

A. I think that belongs to the Burlington railroad.

Q. But this bridge up on the Missouri River, north of St. Joe, you don't know about that?

A. I don't know about that.

Mr. HAGERMAN: I think you will find the Rulo bridge belongs to the Company.

1468 Questions by Mr. HADLEY:

Q. Has the Company paid the taxes on those bridges?

A. A proportion of that, as I understand it, was charged up against the State, and a proportion was not. I don't remember distinctly, but I think they were divided, practically—at least the Quincy bridge was; I don't remember about the other bridge at all. It was divided, only a portion of the Quincy Bridge taken into this State; just on the assessment that was made for it.

Q. Was any account made for bridge tolls, in their earnings?

A. Those bridge tolls are usually taken out of the earnings.

Q. Do you know whether they were or not in this case?

A. I don't know positively that they were in this case.

Q. Do you know whether, in their statement of earnings there is any item covering charges against other roads for handling freight at terminals?

A. In their earnings?

Q. Yes.

A. They would be taken out of their earnings, anything they paid other roads for handling at terminals.

Q. What they received from other roads?

A. What they received from other roads for handling at terminals would be covered largely under switching charges.

Q. Does that appear as a part of the earnings from switchings?

1469 A. I don't know of a case on the Burlington where they have any specific charge, unless it does come in in that way. If it was handled on buildings, it would go into the earnings wherever they had that case; if handled on a switching charge, it would go into the switching earnings.

Q. Have you figured, Mr. Fisher, the cost of maintenance of equipment, and maintenance of roadbed, per mile, as shown by the figures of the Burlington?

A. I think I have. (After examining papers) No sir; I have figured out the percentage of total expenses.

Mr. HADLEY: Mr. Ladd says Mr. Sturgis has testified to that, so I don't care to go into it.

Q. Have you the figures, Mr. Fisher, as to the density of population on the Burlington System in Missouri, as compared with the density of population on the entire Burlington system?

A. I think so.

Q. Give them, please.

A. Density of population in Missouri per mile of road is 403; density of population on C. B. & Q. entire road in Missouri is 684.

Q. That is, the Burlington Railroad runs through a — densely populated part of Missouri than the average population per mile on the roads of the State?

A. Yes sir.

Q. Give me the average density of population on the Burlington System?

A. I had to arrive at that by taking in the population
1470 of all the States through which the Burlington operates.

Q. Certainly.

A. That shows 260 per mile of road; 20.4 per square mile, as

against 39.5 in Missouri; that is, in the counties through which the road runs in Missouri?

Q. What do — mean by that?

A. That is, per square mile of county, taking the whole area over the county, through which the road runs in Missouri, and the square miles of territory. Of course, this item I gave you of 20.4 takes in the area of all the states, the whole states.

Q. How about the density of traffic being proportioned to the density of population?

A. That naturally follows.

Q. How about railroad earnings being proportionate to density of traffic?

A. The greater the density, the greater the earnings.

Q. Did you find from your investigation that the railroad, in computing its losses upon live stock, considered a 75 per cent. rate on feeders sent out from the Kansas City stockyards?

A. They did.

Q. That is, under the Act of 1905?

A. Yes sir.

Q. Is that right, in your opinion as an accountant?

A. No sir, I don't think, hardly. They were entitled to charge up the full rate.

Q. Do you know how much that item amounted to?

1471 A. No sir, I don't know now.

Q. Have you made any comparison of the live stock rate as fixed by the Act of 1905, with the live stock rates that are charged by the Burlington Company on interstate live stock business?

A. Yes sir, I have some information on that. I have here some covering lots, what would be in a number of carloads; what would be the total revenue; and what the rate would be.

Q. Give us some examples there of comparison of the interstate with the State rate?

A. Take ten carloads of horses going from Kansas City to Mobile, Alabama, by way of St. Louis: The through rate based on a standard car of 36 feet, and on the minimum weight, would be $121.00 per car, as shown in F. Frank's Tariff 1 P, of which the C. B. & Q. received 40 per cent.

Q. How much earnings would that give the C. B. & Q.?

A. That would give them $48.40, less the bridge charge which they pay at St. Louis—or $44.40, on the car, or $440 on ten cars.

Q. How about the State rate as fixed by the Act of 1905?

A. That would give them on ten cars, under the State rate, $591.60.

Q. That is, under the Act of 1905?

A. Yes sir.

Q. Now have you other examples showing what the Company would receive upon their interstate shipments of live stock,

1472 as compared with what they would receive on their live stock shipments under the Act of 1905?

A. It is practically the same. On that same shipment, for a shipment to Chicago, they would have received $453.00.

Q. What do you mean by "on the same shipment to Chicago"?

A. Under the same conditions, but under another tariff, where they would handle stock from Kansas City to Chicago.

Q. How much would they have received for that portion of the work done in Missouri, on a shipment from Kansas City to Chicago?

A. $453.60.

Q. And how much on the State rate, for the same shipment?

A. $591.60.

Q. Have you made any comparison upon their rates on cattle?

A. No sir. Their cattle rates would run about the same—Well, there wouldn't be very much difference on the cattle rates.

Q. You mean their interstate rates on cattle give them the same amount of revenue per ton per mile as the rates fixed by the Act of 1905 would give them in Missouri: is that right?

A. Just about that. There is some fluctuation between cattle and horses. It would be greater between hogs and sheep.

1473 Q. I am not asking about hogs and sheep; I am asking about cattle.

A. Yes sir, it would be very near the same. They probably would not receive as much on the interstate shipment as they would for the horses. I had some of those here for cattle.

The MASTER: What is the object of that inquiry? As touching the reasonableness or unreasonableness of the charges authorized by the Act of 1905?

Mr. HADLEY: Yes, Your Honor. My idea is to show that on interstate shipments for the same distance they voluntarily charged what they are now objecting to, in the State of Missouri.

Q. Where did you get these figures on interstate shipment rates on the Burlington?

A. From their tariffs.

Q. Are those tariffs fixed by any governing power other than the Railroad Company?

A. They are not, that I know of. I don't think they are.

Q. Those are the rates which existed prior to the passing of the Maximum Freight Rate Law, passed by the last Congress?

A. They are not affected by that law yet.

Q. It is the rates they have been voluntarily charging?

A. Yes sir, voluntarily charging.

Q. Have you a schedule of comparisons there among your papers?

1474 A. As between the states?

Q. As between the State and interstate shipments of live stock.

A. Only those I had there. Not any more than on interstate shipments, between cattle and calves, on a standard car of 36 feet, between Kansas City and St. Louis, or Kansas City and Hannibal, the rate would be $110.00, as compared with the State rate of $59.19.

Q. I don't understand what you mean by that answer.

A. There is a rate under this tariff that I quoted, on cattle and calves; that is, a proportion of the rate on shipments between Kan-

sas City and Moberly, as I cited a moment ago; on cattle and calves, it would be $110.00, as against $121.00 for horses and mules.

Q. How much would it be under the State Law of 1905?

A. $59.19.

Q. For what distance?

A. Well, in that case, it would be a distance of 225 miles, between Kansas City and Hannibal, and 343 miles between Kansas City and St. Louis.

Questions by Mr. LADD:

Q. In answer to question by Gen. Hadley, you gave the population of the State of Missouri per mile of railroad in the State of Missouri?

A. Yes sir.

Q. What was that?

A. For the whole State, 403.

Q. You reached that, if I understand you, by dividing
1475 the population of the State by the total number of miles of railroad in the State?

A. Yes sir.

Q. Railroads of all companies?

A. Yes sir; taking the total railroad mileage in the State.

Q. The Burlington System you gave some figures on—what were they?

A. That is taking into consideration all the states into which the Burlington Railroad runs, even for a short distance, it would be 260.

Q. You reach that 260 by taking all the population of the states in which the Burlington runs or enters, and dividing it by the aggregate of all the railroads in all those states: Is that it?

A. Yes sir.

The MASTER:

Q. How do you arrive at the density of population in a certain portion of the State, as compared with another portion of the State?

A. To arrive at the C. B. & Q. in Missouri, I took the population of the counties through which it runs in the State.

Mr. LADD:

Q. Did you extend your investigations on that subject to Illinois or Iowa?

A. Yes sir.

Q. What is the showing in Illinois? What is the population per mile of road in Illinois?

A. 415.

1476 Q. What is it in Iowa?

A. 237.

Q. What is it in Nebraska, did you look at that?

A. 183.

Q. Did you look at the Dakotas, North and South?

A. For South Dakota, it was 131. I haven't North Dakota, because they do not enter North Dakota. For Wyoming it was 74.

I said a moment ago that the population per square mile of the

C. B. & Q. in this State was 684 through the counties in which it went. That should be 1449. The 684 excludes St. Louis and Kansas City.

Mr. HADLEY:

Q. Adding St. Louis and Kansas City, how much is it?
A. 1449.
Q. And excluding St. Louis and Kansas City, it is 684?
A. Yes sir.

Mr. LADD:

Q. And in Illinois the density of population per mile of road was 403?
A. Yes sir.
Q. And in Iowa what was it?
A. 237.
Q. Have you the density of population per mile on the Burlington, in Iowa and Illinois?
A. No sir, just for the whole State.
Q. Mr. Fisher, Question 34 which I submitted to you for answer (indicating memorandum)—have you the answer as to the
1477 gross earnings per mile in Missouri of the Burlington, as shown by its statement, as compared with the gross earnings per mile of all the roads in Group 6?
A. The gross earnings per mile of road, in 1904, of the C. B. & Q. in Missouri, was $7,688 per mile.
Q. That is shown by this statement or report to the Board of Railroad Commissioners?
A. It is the report to the Board of Railroad and Warehouse Commissioners. And in 1905 it was $7,611.
Q. That is also in this report to the Board of Railroad and Warehouse Commissioners?
A. Yes sir.
Q. Where.
A. Here in Missouri.

Mr. HAGERMAN:

Q. That is for different periods?
A. That is for the year ending June 30th, 1904, and June 30th, 1905.

Mr. LADD:

Q. What is the average gross earnings of the road in Group 6 of the Interstate Commerce grouping?
A. I have that only for 1904.
Q. Give it for that year?
A. That is $7,746.
Q. Is that the only comparison you have with the gross earnings?
A. I have a comparison with the gross earnings in Missouri, according to the statement rendered for the years ending December 31, 1904, and 1905.

Q. How does that compare with the report ending with
1477½ the fiscal year?

A. 1904, $12,493.00; 1905, $11,021.00.

Q. You mean according to the report of the Burlington Railroad to the State Board of Railroad and Warehouse Commissioners in Missouri, they show only the average gross earnings per mile in 1904; and for the calendar year 1904, according to the statement filed in this case by Mr. Sturgis, they show gross earnings of $12,344.00 per mile?

A. No sir, the $7,688.00 is the average for the whole system.

Q. For the whole system?

A. Yes sir.

Q. I thought you said that was for Missouri?

A. No sir.

Q. According to their statement filed in this case, marked Exhibit 1, the average gross earnings per mile, of the Burlington, in the calendar year 1904, were $12,493.00 per mile?

A. Yes sir.

Q. And the average earnings of all the roads in Group 6 for the calendar year 1904, were $7,746.00?

A. Yes sir. That is for all the roads in Group 6.

Q. Then the average gross earnings per mile for the Burlington system, in Missouri, according to their own statement filed in this case for 1905, were how much?

A. $11,021.

Q. Have you the average gross earnings of the railroads in Group 6, in that year?

1478 A. No sir, I haven't that.

Q. Have you the average gross earnings per mile of the railroads of the United States, in the calendar year 1904?

A. No sir, I haven't the calendar year for any of them. They are fiscal years altogether; ending June 30th.

Q. What is it for the year ending June 30th, 1904?

A. $7,644.

Q. And for all the railroads in the United States?

A. $9,306.

Q. If I understand you correctly, the average gross earnings per mile, of the Burlington, according to these figures submitted in this case, for the calendar year ending June 30th, 1904, were about $3,000 a mile higher than the average for all the roads in the United States, and approximately $5,000 a mile higher than for the average of the roads in Group Six?

A. In the United States, $3,187 higher; in Group Six $4,747 higher; and for the C. B. & Q. system, $4,805.

Q. That is, the average earnings per mile in Missouri were that much higher than the average for the entire system?

A. Yes sir; the average for Group Six, and the whole country.

Q. What conclusion do you draw from those figures as to the extent to which the State rates, or the rates charged for freight business wholly in the State of Missouri, entered into making up that increase?

A. Well, it is the higher rates, and density of population, that has helped that out.

Q. Do you attribute it largely to that, or only——

A. Largely.

1479 Q. Do you consider those the essential, principal elements that enter into the increase?

A. Yes sir.

Q. Density of population, or traffic, and the higher rates in Missouri?

A. Yes sir.

Mr. SPENCER:

Q. And an economical operation of the road?

Mr. HADLEY: I suppose you operate economically.

We have finished with Mr. Fisher on this phase of the case.

Cross-examination.

By Mr. HAGERMAN:

Q. What is your present position?

A. I am president of the National Accounting Company of Minnesota.

Q. What Company?

A. The National Accounting Company.

Q. That is a local company in Minneapolis?

A. Local to Minnesota, yes.

Q. And how large an institution is it?

A. It has a capitalization of $15,000.

Q. And how many people are employed in it, regular accountants?

A. That fluctuates. We have five regular men now.

Q. What does it average?

A. It will average that. It is increasing all the time.

1480 Q. You have been in the public accounting business for seven years, I believe you said?

A. All told, about that.

Q. Were you with this Company all that time?

A. No sir.

Q. How long have you been with the National Accounting Company?

A. Since the 1st of March.

Q. Of this year?

A. Yes sir.

Q. And prior to that with whom, when you were in the public accounting business?

A. I was in for myself.

Q. Located where?

A. In Minneapolis and St. Paul.

Q. You spoke of being an accountant in some receivership cases: what were those?

A. The Cleveland, Canton and Southern, and the L. E. & St. L.

Q. That was in 1894?
A. Yes sir. Although they may have been in 1893.
Q. Where do those roads run, and what is the extent of them?
A. One of them runs from East St. Louis to Louisville, and the other runs from Cleveland, Ohio, south to Zanesville.
Q. What is the distance, about?
A. 220 or 230 odd miles.
Q. What was the nature of your work in those cases?
1481 Going over the Receiver's accounts at the time of their auditing?
A. No sir, going over the accounts prior to the receivership.
Q. For the purpose of ascertaining the preferential nature of claims, divergence of income, etc.?
A. Yes sir, divergence of income, and all that sort of thing.
Q. In those cases the claims were made by the creditors that the income had been diverted, and you were the accountant who had charge of investigating the accounts for the purpose of determining those questions?
A. Yes sir.
Q. Were you in the employ of the Receiver, or of the claimants?
A. I was employed on behalf of some of the claimants.
Q. The work you did in connection with the Milwaukee, the Northwestern, the Northern Pacific, the South Shore, and other roads you mentioned—was that in Wisconsin?
A. Yes sir, the earnings in Wisconsin. It was not in connection with the entire earnings of the property, it only applied to the State of Wisconsin.
Q. In those instances you were employed by some public body in Wisconsin to make that investigation?
A. The Railroad Commissioners.
Q. The Railroad Commissioners, or Governor La Follette?
A. The Railroad Commissioners employed me.
1482 Q. Under the La Follette administration?
A. Yes sir.
Q. And the immediate question you had for investigation was the amount of earnings of those properties, for the purpose of affording the State a basis for taxation?
A. Yes sir.
Q. That is to say, the State officials had you making an investigation as to these companies, as to their earnings, so as to govern them in their action upon the subject of taxation?
A. Yes sir.
Q. About how much time was consumed by you covering your employment, in a general way?
A. It was about sixteen months—that is, steadily.
Q. Before those employments you had had some experience in the accounting departments of the several railroads you mentioned, I believe, the Union Pacific, the Santa Fe, and the Great Northern?
A. Yes sir.
Q. Where were you located? In the Auditor's office?
A. Yes sir, in the Auditor's office.

Q. In what position?

A. In the Union Pacific I had charge of the account of auxiliary properties at one time, and at another time I had charge of the expenses in the Auditor's office.

Q. What do you mean by "auxiliary properties"?

A. Auxiliary property of the railroads, such as the coal department, the land department, the station department, and so on.

1483 Q. How long were you with the Union Pacific?

A. I was with them at different times, altogether about two and a half years.

Q. During what period did that cover?

A. 1886 and 1887, and the last time 1890 and 1891.

Q. And then you worked for the Santa Fe, in what position?

A. I was in the Auditor's office as general clerk, and more especially in general accounts and disbursement accounts.

Q. For how long, and covering what period?

A. I was there in 1897 and 1898, and part of 1899, and I was later Assistant to the Chief Clerk.

Q. For about how long?

A. About a year I was there, very near.

Q. What year was that?

A. Part of 1888 and 1889.

Q. Your relation to the Great Northern was what, and during what period?

A. I was there from November 1st, 1889 to May 1st, 1890. I was Chief Clerk in the Office of the Auditor of Disbursements.

Q. What other road did you have experience with, and for what period of time, and in what service?

A. The I. B. & W., from 1878 to 1886, first; I worked in the local office, as traveling auditor, chief clerk of the freight and passenger accounts. I was with the Receiver of the Columbus and Hocking, and was with them from June 1897 up to 1901.

1484 Q. What was your position there?

A. I was Auditor for the whole period of time I was there, and also Car Service Agent for about half of that time.

Q. What is the extent of your railroad experience?

A. I was with the Southern Railroad a short time.

Q. What position did you hold there?

A. I was in the office of the Auditor of Disbursements.

Q. What is your age?

A. I am forty-five.

Q. When were you employed in this case by the State of Missouri?

A. About the 1st of June, I think it was, of this year.

Q. And your service began when, about the same time?

A. Shortly after that, on the 16th of June.

Q. And when was it you received this Exhibit 1, the statement produced by Mr. Sturgis? Do you remember the date?

A. Either the 16th or the 18th of June.

Q. And then from that time on, until we began taking the testi-

mony in September, and even up to the present day, you have been busy working on the accounts and papers of the Burlington Company in checking up this statement?

A. Yes sir, most of the time.

Q. And during that time you have spent a great deal of the time in the Burlington office, having access to the books and papers, from which to make your comparisons and compilations?

A. Yes sir.

1485 Q. If you will turn with me to Exhibit 1 for a moment, so we may clarify the atmosphere as much as we can: you find that first item, "Earnings from Local Freight, $1,525,158.92," in 1904; and the similar for 1905 aggregating $1,649,665.73, to represent the actual money received from what was known as local or State freight, don't you?

A. Practically so. The volume of it was so great that I could not make a complete verification of it, but I satisfied myself that it was approximately correct.

Q. Taking the time you could afford to put to it, you put the tests by examining here and there, to make a test to your satisfaction, that these statements were correct, with the exceptions where you say they ought to be changed?

A. Yes sir.

Q. As representing the money actually received by the Burlington Road from State freight?

A. Yes sir.

Q. And that had to come from an examination of the way-bills, didn't it?

A. Yes sir, an examination of the way-bills and their statements.

Q. And was a matter of great labor?

A. Yes sir, very great.

Q. In the same way you checked up the items there, Earnings from Passenger Business, except that the tickets there answered the purpose of way-bills?

A. I did not go into the passenger very extensively; not nearly so much as the freight; only just casually.

1486 Q. Taking the first item, "Earnings from Local Freight," in 1904, the only objection you find to that now is that, in your judgment, a portion of the switching and car service earnings included in the third item, for mail, express, etc., ought to be excluded?

A. That ought to be included in there, except that if it was practicable I think the division should be made on the basis of the rates, and not on a mileage basis. It is not practicable to do that, however.

Q. That goes to the division of the switching and car service?

A. Well, yes, the division of the switching and car service.

Q. Let me see if we understand each other, as we go along: the first item for both years is right—unless you are correct that a proportion of switching and car service ought to be added to it?

A. Yes sir, that is right.

Q. We will come to that item afterwards.

A. We cannot locate what part of that is applicable to local switching, so we have used that basis.

Q. The same would be true as to the earnings from interstate freight in both of these years?

A. On the interstate freight it would be with the exception that on interstate freight I think it should be divided between the states on a basis of the rates applicable to each state.

Q. What division did you attempt to make of that kind?

1487 A. I did not attempt to make any, because it would have been impossible to have done so in anything like reasonable time, even with a very large force.

Q. With a very large force, and a length of time it would take, it would be impracticable to attempt to do so for the purposes of this law suit?

A. Yes sir.

Q. So for the purposes of this law suit, we may assume that the earnings on interstate freight are correct, according to this statement?

A. Yes sir.

Q. And, although you do not go into it in detail, that is applicable to the passenger rates, both State and interstate, and for both years?

A. I think so, yes.

Q. Now, coming to the item of "Mail, Express, etc." for each of those years, I believe you said it was your idea that a portion of the switching should be taken out of the "mail, express, etc." account, and put into the freight earnings; and part of it applied to local freight, and part to interstate?

A. That is my opinion, yes sir.

Q. For 1904, the total amount of switching that is included in mail, express, etc., is $137,959.55.

A. Yes sir.

Q. Have you that subdivided so we can find what portion of that is charged locally to mail, express, etc., and what to interstate mail, express, etc.?

1488 A. I have not. The total of that would, I presume, come under the head of "Mail, express, etc."

Q. But whether local or interstate?

A. I mean local; as I remember going over that, all of that $137,000 was in local.

Q. That is to say, the total switching that is in the mail, express, etc., for 1904, is $137,959.55?

A. Yes sir.

Q. And that is included in the local earnings from the mail, express, etc., aggregating $541,660.06?

A. Yes sir, that is the way I understand it.

Q. And not from interstate earnings from that source?

A. That is right.

Q. Your idea is that the $137,959.55 ought to be taken out of the $541,660.06?

A. Yes sir.

Q. And you would add how much of it to the local, and how much to the interstate?

A. The way I arrived at the local freight earnings, I put it in on the basis that the local freight earnings bore to the total freight earnings.

Q. That is to say, you took such portion of the $137,959.55, as it bore to the total cost of the switching?

A. Yes sir.

Q. As the local freight bore to all the freight earned in the State, and put that amount into the local freight earnings?

A. Yes sir.

1489 Q. And the balance of it into the interstate freight earnings?

A. Yes sir.

Q. That added to the local freight earnings how much in dollars and cents?

A. $26,756.97.

Q. That makes the total local freight earnings—have you added that up?

A. No sir.

Q. How much would you add to the entire freight interstate earnings in 1904?

A. It would be the difference between that and $137,000.

Q. It is the difference between $137,959.55 and this amount you have added to the local earnings?

A. Yes sir.

Q. Now, in order to make that apportionment of that switching, you adopted what we have been calling "the revenue basis."

A. That is the only basis I had to adopt, for the reason that it was impossible to separate the amounts applicable to each at this time, and it was impracticable to have done so.

Q. Again, why do you think that the switching ought to have gone into the freight account, instead of what we call "miscellaneous"—that is, I am calling mail, express, etc., miscellaneous, because in some accountings I have seen it was carried that way.

A. It does not matter if you are going to consider the net earnings of the road in its entirety, that is all its earnings. If you

1490 want to arrive at the net earnings for the handling of a particular kind of traffic, you take the expenses applying in that way; and you must necessarily take all the earnings that apply. Undoubtedly a proportion of this switching would apply there, and it would be impossible to segregate the freight expenses as between what would go for switching and what would go for other freight expenses. If you have a particular expense of construction, and part of that goes to the local traffic, therefore in arriving at the percentage—to arrive at the net result, you must use all the earnings, where a proportion of the expense was contributed to produce those earnings.

Q. The ordinary division between accounts is in three classes, freight, passenger, and what we call miscellaneous, isn't it?

A. Yes sir.

Q. This item, "Mail, express, etc.," is what is ordinarily known as miscellaneous?

A. Yes sir.

Q. Switching and car service, by rail-road accountants, as a general thing, are carried in the miscellaneous account?

A. Yes sir.

Q. And for the reasons you have given, you think that for this particular case, for the purposes of this particular inquiry, it ought to be taken away from the regular system of accounting and put into the freight earnings?

A. I think so.

Q. It is because of the particular inquiry that is going on, that you would change the ordinary course of treating that?

1491 A. Yes sir.

Q. That is for 1904 that you gave me the figures?

A. Yes sir.

Q. Now, the switching for 1905 aggregated $126,705.78, didn't it?

A. Yes sir, that is the amount.

Q. You have not included it in the local earnings from mail, express, etc., for 1905, amounting to $553,582.75—just as you haven't included it in the year 1904—have you?

A. Yes sir, in the total local earnings.

Q. And not any of it in the interstate earnings?

A. No sir.

Q. How much of it would you, for the reasons you have given, add to the local earnings from freight?

A. $23,364.55.

Q. And the balance of $126,705.78, in your judgment, for the same reason, ought to be added to the earnings from interstate freight for 1905?

A. Yes sir.

Q. The car service, as I understand you, is what in ordinary terms is called "demurrage"?

A. That is right.

Q. The charge collected for the detention of cars for an unreasonable length of time?

A. Yes sir.

Q. That, for 1904, as I understand, aggregates $32,808.50: is that right?

1492 A. Yes sir.

Q. In what place was that carried, under the head of "mail, express, etc.," local earnings or interstate?

A. I am not quite sure about that. That is, as I understand it.

Q. That it is within the local?

A. Yes sir, I understand so.

Q. And the amount in 1905 was $21,059.21, wasn't it?

A. Yes sir.

Q. And that also is included in the local earnings from mail, express, etc., in 1905?

A. Yes sir.

Q. How do you think it ought to be added—in what proportions to the local freight earnings in those years:

A. I added it on the basis of local freight earnings to the total freight earnings.

Q. You took the proportion exactly as you did in switching?

A. Yes sir.

Q. Give me again your reasons for thinking that car service or demurrage ought to be put in freight earnings—But before that, it is carried in the ordinary way, followed by railroad accountants? That is the ordinary classification?

A. Yes sir, in miscellaneous earnings.

Q. But in this particular case, on account of the particular inquiry we are making, you think it should be taken out of the ordinary course, and put into freight earnings: is that right?

1493 A. Yes sir.

Q. In the proportions you have given?

A. Yes sir.

Q. Why do you say that? What reason have you for your opinion?

A. As I said awhile ago, I think it should be taken into account there, because in apportioning freight expenses to local freight, or to a particular class of traffic, all the earnings that that expense contributed to produce should be taken into account.

Q. Did you ever know of a case in the keeping of accounts where it was not put into the miscellaneous earnings?

A. I don't remember any such case; no sir.

Q. With those changes, if they ought to be made, or ought not to be made, as may be determined in this case—we may pass, for the purposes of this case, the entire question of earnings for both of these years?

A. I don't think I understand that question.

Q. I say, there is no further objection, in your judgment, as to the earnings for either of these years, as found in this statement, Exhibit 1?

A. With the exception, maybe, of the diminution of traffic of——

Q. That comes to another question. What I am talking about now is page 1, the actual earnings, local and interstate, from those three sources, freight, passenger, and miscellaneous, subject to these corrections, on account of car service and switching, which you

1494 think ought to be made, the rest of it is all right for the purposes of this case?

A. Yes sir, I think so.

Q. I will come to the question of the $173,000 diminution. When you made that transfer from the Miscellaneous column to the freight, and divided up the car service and switching items, what did you do with regard to the expense of earning that money?

A. I considered the freight expenses of the road in the State, the total freight expense, and the relation that the local freight earnings bore to the total freight earnings, to arrive at a basis for that.

Q. I don't know that I quite understand you about that: When

it gets into the earnings, the expense should be charged against it in some way.

A. There is no expense, practically, connected with earning any money in connection with car service, that does not come in connection with the freight business. The expense incident to earning that money would be charged as against the freight business.

Q. Your idea is that the general expense of doing the freight business ought to cover the expense; and, therefore, you give no credit for expenses on account of those items, no further credit: is that right?

A. That is right.

Q. Let us go to the items of expense, and see where you differ, if at all, with Mr. Sturgis:

The MASTER: I think I understand the witness to say that
1495 in his judgment there should be charged for each of these matters the sums he has mentioned, to the local freight earnings; and that charge should be a net sum, without deducting therefrom any expense which may have arisen in earning that much money. Is that right?

A. Yes sir.

At this point adjournment was taken until tomorrow, Wednesday, November 14th, 1907, at ten o'clock A. M.

KANSAS CITY, Mo., *Nov. 14th,* 1906.

Met pursuant to adjournment on Wednesday, Nov. 14th, 1906, at ten o'clock, A. M., in the Federal Building, Kansas City, Mo.

Present parties as before; when the following proceedings were had:

Mr. KENNISH: The witness wishes to make a correction in his testimony given yesterday or the day before.

The MASTER: He may do so.

The WITNESS: In the testimony yesterday, as to these average rates per mile, that was worked up hastily, here in the room, and partly on information derived from Mr. Sturgis' testimony. Where it showed the net earnings per mile of road for the system of $2,347, it should be $2,494.39 for 1904; and in 1905, where I gave the figure $2,554.31, it should be $2,551.16. And the net freight earnings for the system, where I gave it for 1904 as $1.857.76, it
1496 should be $2,065.23. And in 1905, where I gave it as $1,831.60, it should be $1,954.19.

The MASTER:

Q. Do those changes necessitate a change in the net earnings for the Missouri lines?

A. No sir.

You asked a question yesterday as to this proportion of switching and demurrage, and, as I understand it, you asked the question if I was putting it in there without it being subject to any charges for expense at all; I believe I said, Yes. What I meant by that was,

that it went into their earnings, and the proportionate expense is charged against it, just the same as it would be against any other.

Mr. HAGERMAN:

Q. In what way is that?

Mr. SPENCER: It took its proportion of the total expenses, but there was no specific expense.

The MASTER: As I understand it, you did not deduct from those items the amount of expense which was incurred in earning this amount?

A. No sir.

Q. But put the gross amount in gross earnings, instead of in the miscellaneous item?

A. Yes sir.

By Mr. LADD:

Q. What is it about the expense of switching? They are charged somewhere, are they?

A. Yes sir, they are charged in the sum total of expenses against the local business. The expense in producing this revenue is included in this other expense, and it stands its proportion just
1497 the same as any carload of freight in the revenue would.

Q. It is charged in the expenses?

A. Oh, yes.

Mr. HAGERMAN:

Q. That is to say, in the total of expenses would be included somewhere the expense of doing switching?

A. Yes sir.

Q. And when you get the method of apportioning that portion of the local freight, your claim is that it will have been accounted for?

A. Yes sir.

Mr. LADD: Excuse me, but I was not here when this came up. I understand that Mr. Sturgis gets at that expense by pro rating according to earnings: is that right?

A. Yes sir.

Q. So if the earnings from the local freight business are increased by the amount of this switching, necessarily the expenses of the local freight business are increased in the same proportion; is that right?

A. Yes sir, it would be on a percentage proportion.

Cross-examination—(Continued.)

By Mr. HAGERMAN:

Q. I now come to the items of expense in Exhibit 1, "Conducting transportation", for each of the years 1904 and 1905, aggregating something in excess of $3,800,000:

You went through the books and papers of the Burlington Company as to that item, didn't you?

1498 A. What years is that?

Q. I am taking it for both years. There is about $10,000

difference in the years. It is on page 1 of Exhibit 1. You checked that up?

A. Yes sir.

Q. And you found that to be correct?

A. Well, we did, for the year 1905. There is a difference in 1904.

Q. Is there any substantial difference?

A. Well, it would not affect the final result materially.

Q. So, for practical purposes, and the purposes of this case, we may assume that that item is correct?

A. Yes sir.

Q. Now the "Maintenance of Equipment" is the next item in that exhibit, in expenses and, as I understand you, for the purposes of this case, it may be assumed that that is correct?

A. "Maintenance of Equipment"—Yes.

Q. $1,337,733.79 for 1904, and $1,653,440.56 for 1905?

A. Yes sir.

Q. While that did include some arbitrary charges for equipment, in the ordinary method of doing business those charges were, in your judgment, proper operating expenses?

A. Well, practically so. I conceded that, inasmuch as I took out of expenses the entire amount that had been put into "Replacement on account of Kansas City bridge."

Q. What you mean to say, Mr. Fisher, as a railroad accountant, is, that it is perfectly proper to charge the operating expenses
1499 some reasonable sum, to fairly represent the wear and tear on the structure or piece of equipment, that does not get to the point of destroying it, or to the point of requiring immediate repairs to be put on it?

A. Yes sir, a reasonable amount.

Q. This Exhibit 11, which Mr. Sturgis produced, was a statement which he prepared at the request of the State, showing the details of the arbitrary charges to the Replacement Fund?

A. Yes sir.

Q. And that you checked over and found to be correct?

A. Yes sir, that is the way it appeared upon the books.

Q. So, for the purposes of this case, we may pass as correct the item of expense for Maintenance of Equipment for the two years?

A. Yes sir, the maintenance of equipment.

Q. When we come to the question of "Maintenance of Road and Structures," for each of the two years, the same thing is true, except the items as to the Kansas City bridge?

A. Yes sir.

Q. $100,000 was charged in 1904, was it?

A. Yes sir.

Q. And $550,000 in 1905?

A. Yes sir.

Q. Those, you claim, ought not to be charged to operating expenses?

A. Not in one year.

Q. That is to say, it would be perfectly proper to make
1500 a charge on account of that replacement, of some character and kind, because it is wisdom to deal with the question as

an operating expense, meeting the general wear and tear, and providing for the future, as to a structure like the Kansas City bridge?

A. Yes sir, for a reasonable amount.

Q. $100,000 for 1904, and $550,000 for 1905; that is right?

A. That is the amount, yes sir.

Q. But those amounts should have been charged up during the whole life of the structure, from the time of its beginning.

Q. But they have not been?

A. No sir, they have not been.

Q. And your objection is, that those items are put into those two years, instead of being distributed over a period of how many years?

A. Over a period of about thirty years, which I understand that bridge has been in existence—whatever the life of the structure would be. It is not right to charge up the full amount in any one year, you know, for the entire renewal.

Q. Doesn't it depend somewhat, in railroad methods, about charging it up, as to whether the year is a good one—meet it out of a good year; and requires the exercise of some practical judgment in the people who are operating the road?

A. I should not say so, because they are not getting a fair showing of the business if they do not show it up in each year. They
1501 never set aside the cash for any one of these things.

Q. Suppose there was no profit in any one year?

A. They should charge it up, and show it as a loss.

Q. That much more of a loss?

A. Yes sir, that much more of a loss.

Q. But the principle is right, treating as an operating expense a charge of this kind?

A. Yes sir.

Q. But your objection is that it is not distributed over a series of years instead of being put in those two years?

A. Yes sir.

Q. That $100,000 and $550,000 are charged as expenses of the whole business in the State, both local and interstate?

A. Yes sir.

Q. So if we were dividing the expenses of the local business upon a revenue basis alone, it would be about what per cent?

A. About eleven per cent.

Q. So, about eleven per cent of those two items would go to the expenses of the local business?

A. Yes sir.

Q. That would be less than $10,000 in one instance, and $55,000 in the other?

A. About $11,000 in one, and about $55,000 or $60,000 in the other.

The MASTER: Let me see if I understand that: whereas credit is taken in 1904 for $100,000 and in 1905 for $550,000, making
1502 in all $650,000 for the two years, Mr. Fisher would reduce that now to what sum?

Mr. HAGERMAN: Upon the revenue basis, it would make it practi-

cally $11,000 in 1904, to be charged against local or State earnings; and practically $50,000 as against State earnings in 1905.

That is right, isn't it, Mr. Fisher?

A. We charged it all to the expenses.

Q. Assuming it was to go into expenses?

A. Yes sir.

Q. But your idea about it is that the $650,000 ought to have been distributed through a period of thirty years, so that only one thirtieth of $650,000 should have been put in any one year?

A. Yes sir. So it was spread out over the life of the structure.

Q. Do you know how much had been accumulated in prior years?

A. No sir, I do not.

Q. Don't you remember looking it up and finding there was about $250,000, making $900,000 altogether that had been appropriated during the course of years on account of that Kansas City bridge?

A. It was $750,000, as I remember it. Maybe it was $250,000 in previous years.

Q. Making $900,000 in all?

A. Yes sir.

Q. So your figures should be one-thirtieth of $900,000 instead of one-thirtieth of $650,000?

1503 A. Yes sir.

The MASTER: I don't understand him that way, quite: as I understand him, it is that he should set aside in the thirty years, enough for the entire cost of reconstruction. As I understand Mr. Fisher, it is necessary to apportion over a period of thirty years, enough to complete the structure?

A. That is to say, over the life of the structure. Of course, you have to make an estimate as to the life of the structure.

Q. But you are assuming that $900,000 would be sufficient for the replacement of the structure?

A. I don't know what would be sufficient.

Q. But if [illegible],000 would not be sufficient, you would apportion, in the thirty years, enough to make it sufficient?

A. Yes sir.

Mr. HAGERMAN:

Q. Whatever the cost of rebuilding the structure would be, you would apportion through the thirty years, so much per year?

A. Yes sir.

Q. I believe you said the taxes were found to be all right?

A. Yes sir.

Q. Now the next item is the proportional of rental in the expenses of 1904 and 1905: there is no difference between you and Mr. Sturgis as to the figures, is there?

A. None whatever.

Q. That is, that is the rental that is called for and was paid under the lease?

1504 A. Yes sir.

Q. But your point about it is, that you don't think that ought to be charged as an operating expense?

A. I do not think it should be charged as an operating expense. It should be in the income account.

Q. As an accountant, you would make that a charge in the income account?

A. Yes sir.

Q. And not in the expense account?

A. Yes sir.

Q. That is the extent of the difference between you and Mr. Sturgis in this account?

A. Yes sir, that is right.

Q. I want now to change to page 2 of Exhibit 1.

The MASTER:

Q. Would you, then, eliminate entirely from the credit taken in Exhibit 1, of the general expenses, $703,000 in 1904, and $812,000 in 1905?

A. No sir, those are all right. The taxes are all right. It is the rental that is not.

Q. Would you eliminate entirely those items?

A. Yes sir, in a statement of this kind, I would.

Mr. HAGERMAN:

Q. That is to say, although the figures are right, as an accountant you do not think that ought to be charged into the expense account, but should be charged against the income account.

A. That is right, yes.

Q. Let us start on Page 2 of this Exhibit 1, the total revenue received on local business of the classes mentioned in the Act, for 1904 and 1905: You have checked over those figures have you?

1505 A. Yes sir.

Q. And those are correct?

A. Yes sir, those figures are correct.

Q. $539,270.09 for 1904?

A. Yes sir.

Q. And $526,532.72 for 1905?

A. Yes sir.

Q. And that is the actual revenue, checked up from the way-bills, that was received on local business of the classes mentioned in the Act of 1905?

A. I am satisfied they are practically correct.

Q. What have you to say about the next item, the total which would have been received had the rates authorized been charged?

A. I think, to show the result of operating the property under these different rates, the amount of the rates under which the road would have to operate, or could operate, should be taken into consideration; and, therefore, my statement that there should be $71,000 in 1904, and $44,500 in 1905.

Q. The figures now made by Mr. Sturgis are correct, but you say that they ought to be reduced for certain reasons; isn't that it?

A. The revenue which they would receive should be increased.

Q. So that would reduce that diminution?

A. Yes sir.

Q. But what I say is, that the total diminution shown on page 2 of Exhibit 1, $173,770.44 for 1904, and $171,122.07 for 1905, is correct, subject to this claim which you make?

1506 A. Yes sir.

Q. Let me understand what your claim is: that there ought to have been added to the revenue for 1904 $71,977.44?

A. That is right.

Q. Why?

A. As I stated a moment ago, in arriving at the result of operation of the property, under the new schedule of rates, I think it is necessary to take in what those rates would produce on the traffic handled. Mr. Sturgis' statement did not take into consideration any business that was handled at a less rate than this Act of 1905 provided.

Q. What did you mean to say, that if the railroad company had charged on all the articles covered by the Act of 1905, up to the full amount that is authorized by that Act, there would have been a result of $71,000 more?

A. Yes sir.

Q. But, charging exactly what they did charge, the reduction would be just as Mr. Sturgis gives it for those two years?

A. Yes sir.

Q. Upon what articles was it that the charge was made less than the Act of 1905, by which you reached this result?

A. Practically all of them. All of them in 1905, and all of them but live stock in 1904.

Q. Do you mean that the railroad could have charged the higher rates you speak of, and gotten the business—as a practical question?

1507 A. Well, I don't know as to that. They may have been able to, and they may not.

Q. The rate they could get would depend upon competition and other outside matters?

A. To a considerable extent, yes.

Q. And you do not propose to say, or would not mean to say, that they could have gotten the business by charging the higher rate?

A. They might not have gotten all of it, but they probably would have gotten a share of it, and they might have gotten all of it.

Mr. SPENCER:

Q. Have you made any statement showing the commodities, or articles, on which the road charged less than it would have been entitled to charge had the new law been in effect in 1904?

A. You mean on the commodities covered by the Act of 1905?

Q. Yes.

A. Yes, that is the one upon which I made the statement of $71,000.

Q. Have you a sheet showing the shipments on which the lower rate was charged, so as to make up this $71,000?

A. The specific shipments?

Q. Yes.

A. I have for 1905.

Q. Where we charged less than the new law would have authorized?

A. Yes sir, in part.

Q. Would you let me see that?

1508 A. I don't think I have that here with me.

Mr. SPENCER: It was our impression that no shipments had been made at less rates in Missouri than this proposed law, and if he has such a statement we would like an opportunity to examine it.

Mr. LADD: I understood when Mr. Sturgis was on the stand that he and Mr. Fisher agreed that that amount was $71,000.

Mr. HAGERMAN: Mr. Sturgis said that he would have no disposition to question Mr. Fisher's figures if he had gone through them, and made them up.

The MASTER: I do not know from what witness I derived the impression, but my impression is that the Road has not charged in the years 1904 and 1905 up to the limit of the Act of 1905, had it been in force, on some of the articles specified in the Act; and that they did not do it because it would have driven them from the field—that is, competition would have driven them from the field, and deprived them of the business.

Mr. SPENCER:

Q. Have you a computation showing that?

A. I have it here in part. There were so many way bills missing from the work sheets on which this was all compiled, that we could not make the thing complete.

Mr. SPENCER: I understand from Mr. Sturgis that there were articles on which rates less than the proposed Act fixed were charged, and he and Mr. Fisher agreed upon those figures.

1509 Mr. HAGERMAN: So as to have no doubt about it, I understand that what you mean to say is, that on page 2 of Exhibit 1, the figures as to the total diminution in revenue, had the charges been made under the Act of 1905, are as Mr. Sturgis there gives them, subject to your contention?

A. Yes sir.

Q. And your contention is that: That upon certain articles, between certain points in Missouri, if the total sum had been charged in 1904 and 1905 that could be charged under the Act of 1905, it would have made the difference in 1904, how much?

A. $71,977.44.

Q. And in 1905 how much?

A. $46,522.46.

Q. Have you a statement showing how you reached that result, that you can give the stenographer, so we can have it in the record?

A. No sir, I have no statement that would show the detail.

Q. How much of a statement have you?

A. I have this statement (indicating).

Q. This statement shows the class, commodity, and sum total earnings as to that particular commodity?

A. Yes sir.

Mr. HAGERMAN: I would like to have that put in as an exhibit, because it shows how he arrived at that result.

The paper referred to is marked Complainant's Exhibit 13, and is in words and figures following, to-wit:

1510 Q. Did you figure in percentage what that reduction would be, according to your theory, in each of the years?

A. No sir, I did not.

Q. Mr. Sturgis has, according to his theory, 32.22 per cent. in 1904, and 32.49 per cent. in 1905?

A. That would decrease that sum, but not very materially.

Q. You have not the percentages?

A. No sir.

Q. The details of the total diminution as it is given in Exhibit 4, are as set out on pages 3 and 4 of that Exhibit, for the two years?

A. Yes sir.

Q. And those figures, as thus set out, are correct?

A. Yes sir, with the exception we have just been talking about.

Q. Subject to your claim, I understand?

A. Yes sir.

Q. Now, we have gone through in detail the statement of Mr. Sturgis, and you have pointed out all the differences that there are between you?

A. Yes sir.

Q. Among other things you called for, for the purpose of checking up, was the cost of constructing what we term here the Old Monroe and Mexico line?

A. Yes sir.

Q. And Mr. Sturgis gave you a statement of that on September 5, 1906?

A. He gave me a memorandum of it about that time—yes sir.

1511 Q. And that showed, exclusive of the question of terminals, and exclusive of equipment, that the average cost per mile was $45,867.05?

A. Yes, sir, that is correct.

The MASTER: Before proceeding with that, let me see if I understand the witness:

That with the exceptions noted by him, and testified to by him, he makes no further objection to any of the items shown on Exhibit 1 prepared by Mr. Sturgis: is that right?

A. Yes sir, that is right.

Mr. HAGERMAN:

Q. What was that amount, Mr. Fisher?

A. $45,867.05.

Q. Did you check that up?

A. That is what it appears from the general account in the general books. I did not check up any detail of it.

Q. You had every opportunity to check it up, didn't you?

A. Yes sir.

Q. And you have no reason to suppose that is not right?

A. So far as the items on the books are concerned, it is all right?
Q. The statement is correct?
A. Yes sir.
Q. Have you a statement now of the assessment of the State Board of Equalization against the Burlington property?
A. I have, in part; I can get all of it if I have not what you want.
Q. Have you it for 1904? How much was it per mile?
A. I don't think I have it figured out per mile.
1512 Q. Give us the total, then.
A. I have it exclusive of the assessment on the Pullman cars run over the road; and the franchise, which amounts in 1904 to $10,339,893.28.
Q. Exclusive simply of the Pullman cars?
A. That is exclusive of the Pullman cars and the franchise.
Q. But you have excluded the franchise. What is it including the franchise?
A. I would have to get the franchise to find that out. That is in the Clerk's office, if you want that.
Q. What is the whole thing, including the Pullman and the other?
A. I haven't anything but what excluded that. The figures excluded that. I haven't the figures for the Pullman and the franchise here.
Q. Why can't I ask you to do this: Give it to us in detail, hand it in to the stenographer—the assessment itemized in any way you want to, but have every item in it.
A. Say all the property, exclusive of Pullman and franchises, and the franchises, and the Pullman, making three items of it.
Q. Yes. Now that is for 1904, 1905 and 1906?
A. I have not the 1906 figures here.
Q. You can get them so as to complete the statement?
A. Yes sir, I can get them.
Q. It has been stated here that that assessment was on the basis of 33⅓ per cent., and in 1904 it was, in round numbers
1513 $13,000 a mile?
A. Just about that.
Q. And that would be upon the basis of the valuation how much, 39 or 40 per cent.?
A. It would be about $39,000, on the basis of one-third.
Q. In 1906, when General Hadley was a member of the Board of Equalization, it aggregated something over $18,000 a mile, didn't it?
A. I don't know. I have not seen the 1906 assessment at all.
Q. That would make a valuation of about $54,000 on the basis upon which it was assessed?
A. On the basis of $18,000 it would.
Q. You will make up your statement in three items, so as to give the Master the information, if he wants to make a reduction on account of the Pullman cars, or the franchise, or both, or include them?
A. Yes sir.
Q. Mr. Fisher, yesterday you spent considerable time giving com-

parisons as between the charges in Illinois, Iowa and Missouri: Have you any tabulation of the relative charges upon the commodities covered by this Act of 1905?

A. No sir, not between those various states. I have some as between the charges within the State, and the proportional rates on interstate charges. I gave one example of that yesterday, I think.

Q. And in all your comparisons between the Illinois rates, the Iowa rates, and the Missouri rates, you have not any figures
1514 upon those items and commodities covered by this particular Act in question?

A. No sir, only as they w-uld apply in the class rates.

Q. You heard Mr. Crosby's testimony, where, among other items, he went into some detail about live stock, where Iowa and Illinois were charging 40 to 50 per cent. higher than they were in Missouri: Did you check up any of his statements in that regard?

A. No sir.

Q. Have you any reason to question them, or have you made any figures toward questioning them?

A. I will tell you just in a moment whether I have any of those (examining papers).

Q. I did not follow it very closely, but I do know what Mr. Crosby testified to on that subject, and if you have anything that combats his figures upon that, I should like to have it. I understood that your comparisons yesterday were on matters outside of the commodities involved in this litigation?

A. Well, now, I have only got that in a way. This is on the Commissioner's schedule, you understand.

Q. Let me see what it is. I don't care about wasting any time on this unless you have gotten it up.

A. Here it is (handing paper to Counsel).

Q. What is it? You have something there about cattle, that is what I was more particularly interested in.

A. This is simply a reduction per ton per mile on the basis of revenue.

1515 Q. Upon cattle, under the present charge in Missouri, according to your figure, what revenue per ton per mile did they get in Missouri?

A. On a distance of 200 miles it would be 1.5 cents.

Q. Under the new Act?

A. 1.05 cents.

Q. And what in Iowa?

A. 1.55 cents.

Q. And what in Illinois?

A. 1.21 cents.

Q. Take your first item there, ton miles, that would be 11 cents in Missouri, under the present charges?

A. Yes sir.

Q. 11.1 in Iowa?

A. Yes sir.

Q. And in Illinois?

A. 11 cents.

Q. And under the proposed Act in Missouri, it is cutting it down to six cents?

A. Yes sir, for the short distance.

Q. But you have not gone into that detail as to all the commodities covered by this Act?

A. Practically all of them. Of course this is just figured up, the supposed tonnage, to get the revenue tons per mile.

Q. So it was not taking the commodities themselves, and figuring it from the table?

A. From the actual traffic.

1516 Q. Yes.

A. No sir.

Q. When you make out this statement as to taxes, would you add to it, and save us the trouble of making up an additional statement, what that is per mile, as well as the total, and then what the valuation would be upon the multiple of three used by the State Board of Railroad and Warehouse Commissioners, so we will have all the figures on one paper?

A. I will do it.

Questions by Mr. SPENCER:

Q. I want to call attention to this statement showing traffic handled in 1904 and 1905, at less rates than the rates authorized by the Act of 1905: Have you another one of these?

A. I have only one more.

Q. I wanted the Master to look at that, while I ask you some questions:

In ascertaining the amount of $71,000, I want to ask you if the principal item is not $29,000, on cement and salt?

A. Yes sir.

Q. Did you hear Mr. Crosby testify in relation to the rate applied to cement?

A. I don't remember that specifically, no sir.

Q. You don't remember that the rate was less than the authorized rate, because of the competition with cement industries near the points of destination, St. Louis, for instance? They make a lower rate from Hannibal to St. Louis than was authorized by this

1517 Act, for the reason that they had to compete with shipments both in St. Louis and near by: did you hear that testimony?

A. No sir; I don't remember it.

Q. If it be a fact, Mr. Fisher, I will ask you as an expert, that the cement at Hannibal and other points that distance from St. Louis has to compete with cement manufactured in St. Louis, isn't it a fact that you would not be able to move the cement from Hannibal into St. Louis at all at the rate allowed under the Act of 1905?

A. Well, that is a matter that conditions would govern a good deal, I think.

Q. Commercial conditions?

A. Yes sir. For instance the plant at Hannibal might be able to manufacture cement so much cheaper, as to compete with St. Louis.

Q. Your conclusion assumes, or your figures assume, that the rail-

road did not make the commodity pay all the revenue that it should have made it pay?

A. That is the assumption, of course.

Q. That they voluntarily charged less than they could have charged, and moved the business?

A. Yes sir.

Q. Take that for the items of stone and clay, which form large items in that sheet?

A. About $6,000.

Q. And also below there?

A. Yes, about $10,000.

Q. Wasn't that accounted for by Mr. Crosby's testimony
1518 on the ground that it was competition with quarries right in the city of St. Joe, and other terminal points?

A. I suppose he would account for those items, all of them, on that same principle.

Q. All of those could be accounted for if the commercial conditions would justify them?

A. Yes sir, they might be.

Q. I would like to ask you to look at that comparative statement that purports to be a comparison of the rates named in the new law with the rates in Iowa, Illinois, Kansas, Nebraska; and also the interstate rates between certain states?

A. Yes sir.

Q. You have never seen those before?

A. No sir.

Q. You would not be able to state whether it was correct or not?

A. No sir.

Mr. SPENCER: I want to file that statement as an Exhibit in connection with the cross examination of Mr. Fisher, and at the proper time I will prove by Mr. Crosby that it is correct.

Mr. LADD: I do not object to your identifying it.

The MASTER: We will suspend the further examination of the witness now on the stand, and give Plaintiff's Counsel an opportunity to introduce Mr. Crosby, in order to identify the exhibit.

1519 G. H. CROSBY, recalled, on behalf of the Complainant, testified as follows, to-wit:

Direct examination.

By Mr. SPENCER:

Q. Mr. Crosby, what is this paper I show you?

A. It is a compilation of rates on the commodities named, taken from what is known as the Dickinson Bill.

Q. What we have been referring to here as the Act of 1905?

A. Yes sir. The Iowa Distance Tariff rates: for the same distance, Illinois, Kansas and Nebraska tariff rates. Also the interstate rates on those commodities between various points. For example, here is an interstate rate between Carrolton, Mo., and Pulaski, Iowa; and between Galesburg and Tyrone; and between Chicago and

New London, Iowa. These are for similar distances to those named in the distance tariffs, showing what the interstate rates are for those distances, as compared with the distance tariffs.

The MASTER:

Q. That paper was compiled by you, or under your immediate direction, and correctly represents what appears on its face?
A. Yes sir.

Mr. LADD: I may wish to cross-examine Mr. Crosby about that statement after I have examined it.
The MASTER: Certainly.

The paper referred to is marked Complainant's Exhibit 14, and is in the words and figures following, to-wit:

1520 Q. Mr. Crosby, will you state what this paper I show you is?

A. This is a statement showing the number of cars of live stock handled by the C. B. & Q. Railway Company, from various stations in Missouri, and what shipments moved between points in Missouri.

Mr. LADD: If your Honor pleases I do not want to be captious about it, but here is testimony being introduced on the part of the Complainant, right in the middle of our evidence.
Mr. SPENCER: The only purpose in this is that it was brought out by Mr. Fisher's statement yesterday that somewhere in Missouri there was a rate charged less than the rate in Iowa, and comparing the Missouri rates with the Iowa rates; and these statements were made for the purpose of showing the facts as they existed in doing the business in Iowa and Missouri, and I desire to identify them as having been compiled by this witness, and simply put them in the record.
Mr. LADD: But I don't think this is the time.
The MASTER: It is a little irregular, unless, as I understood you in respect to the other paper, you wish to ask the witness previously on the stand some question.
Mr. SPENCER: That is exactly the reason.
The MASTER: Then I will permit you, subject to the right of Counsel for Defendant to cross-examine Mr. Crosby at the proper time.

The paper referred to is marked Complainant's Exhibit 15, and is in words and figures following, to wit:

1521 Q. What does this paper show?

A. This paper shows shipments of live stock made from various stations in Missouri, on the C. B. & Q., both State and interstate; and where they show separately, the shipments that moved between points in Missouri. It shows the revenue we received on the tariff in effect in 1904, what we would have received on the proposed basis, and the revenue that would have been received provided the Iowa basis of rates had been applied.

Q. It is simply a comparison between the present rates in Mis-

souri, and the proposed rates, and the Iowa rates, which have been introduced by Mr. Fisher into this case?

A. Yes sir.

The MASTER:

Q. That paper was also prepared by you, or under your personal direction, and you know that it correctly represents the matters therein stated?

A. Yes sir.

1522 Cross-examination of E. M. FISHER.

Resumed by Mr. SPENCER:

Q. Will you look at the paper marked Exhibit 14, and name the rates for the first twenty-five miles there in Missouri, under the proposed Bill?

A. On all articles?

Q. On those three articles.

A. $6.00 a car in each case.

Q. What is the next State on that paper?

A. Iowa.

Q. What is the rate on the same articles in Iowa?

A. $13.74.

Mr. LADD: It does seem to me that this is improper. Judge Spencer introduces a witness in the middle of our testimony, and he identifies two papers, which Mr. Fisher says he doesn't know anything about, and which we do not know are correct, but which Mr. Crosby says are correct as he has compiled them. Then Judge Spencer turns over one of these papers to one of our witnesses, and cross-examines him, and asks him to read from it.

The MASTER: Yes, it is irregular.

Mr. LADD: He makes our witness read from a paper which they have prepared, and which he never saw before this moment.

The MASTER: Then, another thing, Judge Spencer, while I think you undoubtedly have a right to interrogate Mr. Fisher upon
1523 any matter that appears upon the face of that paper, nevertheless I think it would be only fair and just to the witness that he should have a previous opportunity of examining the paper before he is so interrogated.

Mr. SPENCER: I will submit these two papers, and have Counsel and the witness both examine them, and then we can ask the questions.

Redirect examination.

By Mr. LADD:

Q. Complainant's Exhibit 1, on page 1, shows for each of the years 1904 and 1905, earnings in the amounts stated, under the head of "Mail, express, etc."?

A. Yes sir.

Q. Have you examined the books of the Company to see how

those earnings are divided up, and from what source they were obtained?

A. That is all itemized in Exhibit 12.

Mr. HAGERMAN: It is all itemized in Exhibit 12, which he says he examined and found correct.

Mr. LADD: I will withdraw that question, then.

Q. Mr. Fisher, referring again to page 1 of Complainant's Exhibit 1, there is for 1904, in the tabulation of expense the item, "Proportion of rental $3,169,369.73": Now I understand Mr. Sturgis to have testified that this amount is reached by taking the proportion of the gross amount on the whole system, for interest on bonds, sinking fund payment, and dividends which the total Missouri earnings bore to the total earning of the system? Is that right?

1524 A. Yes sir, that is the way it was arrived at; taking the total charge for those accounts, and apportioning it to Missouri on that basis.

Q. The total amount for the entire system of this item being $15,658,941.34 for 1904, and $3,169,369.73, being 20.24 per cent. of that, being the ratio which the total earnings in Missouri bear to the total earnings of the system: is that right?

A. Yes sir, that is right.

Q. And the result for 1905, $2,974,501.50, is reached in the same way?

A. Yes sir.

The MASTER:

Q. That last item was corrected?

Mr. LADD: $2,893,614.75: is that right?

A. Yes sir.

Mr. HAGERMAN:

Q. Have you the total for the system?

Mr. LADD: I have it here in my papers.

Q. The item for 1905 being what Mr. Sturgis regarded on his basis of classification as the Missouri proportion of a total sum of $15,880,251.21: is that right?

A. $15,890,251.21.

Q. Now, when you stated upon cross examination that the proportion of rental for both those years, as stated on page 1 of Complainant's Exhibit 1, was correct, you meant, I suppose, that it was correct upon Mr. Sturgis' basis of reckoning?

A. Yes sir.

Q. Which I have just stated?

1525 A. Yes sir.

Q. That is what you mean?

A. Yes sir, that is what I mean.

The MASTER:

Q. Are you excepting to the basis?

Mr. LADD: I have been excepting to the basis all the way through.

Mr. HAGERMAN: I understood this witness to say the basis was all right, but the question was whether or not it was to be allowed.

Mr. LADD: I don't think any sinking fund should be charged to Missouri. That is one point. I thought that appeared very clearly in my examination of Mr. Sturgis. I don't think any sinking fund should be charged to Missouri, on any theory.

The MASTER: I confess, Mr. Ladd, that I derived the impression from the cross-examination of this witness, that he had no exception to this item at all.

The WITNESS: Oh yes, I have exception to the item, to their taking it into operating expenses.

Mr. LADD: What I have been trying to draw out, if your Honor pleases, is that, so far as the mathematical calculations are concerned, they are right, according to the books of the Burlington Company.

Q. That is what you mean, Mr. Fisher?

A. Yes sir. In other words, in my statements and calculations, I did not consider it at all. So far as the mathematical calculations are concerned, it is all correct.

Q. Mr. Fisher, have you some statements that you have
1526 tabulated, of various kinds?

A. I have a few of them here.

Mr. LADD: If your Honor pleases, we have not had time to get those statements out, and there are not many copies of them, but I want to look them over, and such as I desire to put in I wish to introduce in connection with Mr. Fisher's testimony. They are tabulated statements that I cannot put in just now, but if necessary I will have Mr. Fisher identify them.

The MASTER: Very well.

Mr. LADD: Then, with that understanding, that is all I desire to ask Mr. Fisher at the present time.

The MASTER: Of course, Counsel for Complainant shall have the right to cross examine the witness further, upon any of the statements that you may submit.

Recross-examination.

By Mr. HAGERMAN:

Q. I want to understand, is there any criticism as to the method by which that item of rental is figured, if it is a proper charge? Ought it to be apportioned in any other way, or is it figured all right, assuming it is a proper charge?

A. It is all right, except—Well, the dividends would be all right, I think, and possibly the bonds.

Q. The interest on the bonds?

A. Yes sir, the interest on the bonds. The sinking fund proposition would depend altogether on the relation that the sinking fund bore to the obligation; it might and it might not.

1527 Q. Isn't it right, in railroad operatian, to provide a sinking fund, to be taken up annually?

A. It is, in some cases.

Q. Outside of the sinking fund, what else is there objectionable about it, assuming that rental is to be charged: you do not take it into consideration at all?

A. No sir, I don't consider it at all.

Q. Assuming the Court should disagree with you, and say that it should be considered, what else besides the sinking fund is to be criticised?

A. I think perhaps the bonds might be. It would take an analysis of the bonds to determine that.

Q. In what way?

A. To determine the obligation upon Missouri property.

Q. That is, the proportion ought to be ascertained in the way it is?

A. Not altogether.

Q. Have you any different way for apportioning it at all?

A. I have not apportioned it in any way at all. I haven't considered it at all.

Q. For the purposes of this case, there is no objection to the method adopted?

A. Well, there might be.

Q. Is there?

A. I don't know that there definitely is.

Q. What I want to know is, whether you experts have figured out anything else, so we can get to figuring and see if we should figure it your way?

1528 A. No sir, I did not figure as to the location of the bonds or what property they covered.

Q. Therefore, not having figured it out, if it is to be allowed, this method of apportioning is the only one left?

A. It might be figured out.

Q. In undertaking that work, it would have to be done this way, wouldn't it?

A. I don't know that it would necessarily have to be done this way, because I didn't figure it out to make an apportionment of it at all. It seems to me if he was going to use that, there should be an analysis of that account made for that purpose.

Q. The State's expert has not made such an apportionment as you suggest, and does not propose to undertake to do it: is that right?

A. I don't know whether we would undertake to do it or not.

Q. But you haven't had it in mind?

A. No sir.

Q. And that would be a matter of some considerable work, wouldn't it?

A. It would depend altogether on the record.

1529 CHARLES S. LUDLAM, a witness of lawful age, being produced, sworn and examined, on the part of the defendant, testified as follows:

Direct examination.

By Mr. L. B. LADD:

Q. Give your name and residence.
A. Charles S. Ludlam, New York City.
Q. What is your business?
A. Certified Public Accountant.
Q. With what firm are you connected?
A. Haskins & Sells.
Q. One of the members of the firm, are you?
A. Yes sir.
Q. Haskins & Sells are public accountants, are they?
A. Yes, sir; certified public accountants.
Q. Where are their headquarters?
A. Their headquarters are in New York City. They have branch offices in St. Louis, Chicago, Pittsburgh, Cleveland, and London, England.
Q. When was that firm organized?
A. In 1893, I believe.
Q. Have you been connected with them ever since?
A. Within two or three months after they started.
Q. They started in New York, did they?
A. Yes, sir.
Q. Do you know what experience Mr. Haskins had, as an accountant before that firm was organized?

1530 A. Mr. Haskins had had considerable accounting experience on several railroads. I don't know that I could tell in detail all the different roads, but prior to the organization of the firm, he was Auditor of Disbursements of the West Shore Railway Company.

Q. What railroad experience had Mr. Sells had before that firm was organized?

A. Mr. Sells' entire business experience has been with railroads. He had been station agent, telegraph operator; clerk in the auditor's office, clerk to Mr. Nettleton; President of the Kansas City, Fort Scott and Memphis; clerk to the Comptroller of the Kansas City, Fort Scott & Memphis; Comptroller of the Oregon Railway and Short Line Navigation Company; and auditor of the Colorado Midland Railroad Company.

Q. Have Haskins & Sells together done any work for the Government as accountants?
A. Yes sir.
Q. What?
A. That is where Mr. Haskins and Mr. Sells first met. They were employed jointly by the Government to reorganize the accounting system of the Treasury Department of the United States Government.
Q. When was that?

A. In 1891.
Q. How long a work was that?
A. About two and a half years.
Q. That was before the firm was organized, that they worked together?
1531 A. Yes sir, they worked together; and when that work was completed, they organized a firm in New York City.
Q. Since the organization of the firm, have they done any Government work?
A. Yes, sir.
Q. What is it?
A. They were employed by the United States Government to make an examination of the accounts of the City of Havana, Cuba, immediately after the United States took possession of the City of Havana.
Q. Have they done any other Government work?
A. Yes sir; they were subsequently employed by the United States Government to make an examination of the accounts of the military division of the entire Island of Cuba.
Q. How long did that work in Cuba take, both of those jobs?
A. I think the first one took three or four months, and the second one about the same length of time.
Q. Has your firm done any other public work? Have you done any public work in Missouri, for the State?
A. Yes sir.
Q. What was it?
A. We made an examination of the finances of the State of Missouri, for Governor Dockery, I think in the year 1903.
Q. I will call your attention to what I suppose you consider an important piece of work, in Chicago, what was that?
1532 A. We were employed by the City of Chicago to re-rate, investigate and adjust the special assessment accounts of the City of Chicago, from the time of the Chicago fire, which was in 1871, to April 30th, 1901, covering a period of about 30 years?
Q. How long were you employed on that? What other work did you do in Chicago?
A. We were also employed by the City of Chicago to devise and install a complete system of accounting for the City.
Q. Is that in use there now?
A. Yes sir.
Q. When was this Chicago work done?
A. The Chicago work was started in 1901, and occupied about three years.
Q. How many men were employed in it, on the average?
A. We had from forty to sixty men on that work.
Q. What work, if any, have you done for your firm in recent years, in connection with any of the leading life insurance companies?
A. You mean have I done, or my firm?
Q. What work has the firm done?

A. We were employed by the Equitable Life Insurance Company; also by the New York Life Insurance Company; also by the Mutual Life Insurance Company; to make a complete examination, within the past year and a half, of the accounts of each of those three companies.

Q. Since the insurance agotation has sprung up?

1533 A. Yes sir, and probably as a result of it.

Q. Your employment by the Equitable, was that before the change of administration or afterwards?

A. Subsequently.

Q. You were employed by Mr. Morton, were you?

A. Yes sir.

Q. Who was connected with you in that investigation, any other firm of accountants?

A. Yes sir.

Q. Who?

A. The examination was made jointly by our firm, and Messrs. Price, Waterhouse & Co., whose main office is in London, and who have a branch office in New York.

Q. How long did your examination of the Equitable accounts continue?

A. I should say from eight to ten months.

Q. How many of your own men were employed on it?

A. We had from twenty to forty men.

Q. How about the Mutual Life Insurance Company?

Mr. SPENCER: It does seem to me that the qualification of this firm has nothing to do with this particular witness.

Mr. LADD: That is what I am getting at now. I will get at it in my own way.

Mr. SPENCER: But I am objecting to your way.

The MASTER: The objection is over-ruled.

Mr. LADD: I think it goes to the capacity of the men who have done this work, that they are employed by a firm doing the

1534 kind of work indicated.

The MASTER: The objection has been over-ruled, Mr. Ladd.

Mr. LADD:

Q. How long did that examination of the accounts of the Mutual Life Insurance Company continue?

A. About eight months.

Q. And of the New York Life?

A. The New York Life took about four months.

Q. Hoe many men does your firm keep in its permanent employ?

A. About one hundred and fifty accountants and assistant accountants?

Q. What railroad accounting has your firm done in recent years, and for what railroads?

A. Of course, it is not customary for us to mention our relations with clients, where those are confidential, but in the case of numer-

ous railroads we audit, our certificate of the accuracy of their accounts is published. Among such roads I might mention the Erie, the Philadelphia & Reading, the Lehigh Valley, the Louisville & Nashville, the Atlantic Coast Line, the Central Railroad of Georgia, the Atlanta & West Point, the Western Railway of Alabama, the Buffalo, Rochester & Pittsburg. That is all I recall just at the present time.

Q. The Queen & Crescent?

A. Yes, sir; the Cincinnati, New Orleans, and Texas Pacific.

Q. That is the same as the Queen & Crescent?

1535 A. Yes sir.

Q. In this different work you have mentioned as having been done by your firm, in what part of it did you participate yourself?

A. I have participated in all of it. There is none of the work of our firm, probably, in which I have not participated. I took direct, personal charge of the Equitable examination, and also of the New York Life examination. To the Mutual examination I gave only such attention as resulted from conferences when important subjects were to be discussed.

Q. How about railroads?

A. I do not think there is a road I have mentioned that I have not personally audited at different times.

Q. Those railroads you have mentioned, you audit their accounts annually?

A. Yes sir—That is, some of them semi-annually, and some quarterly, but all of them annually.

Mr. SPENCER:

Q. Did you adopt any method of your own in auditing, or do you adopt the railroad method of accounting in these various railroads?

A. Our auditors simply determine whether their accounts are correct.

Q. According to their own methods?

A. Yes sir. I do not mean by that, that we would not criticise their method.

Q. You do not do that?

A. We criticise it where we do not think it is proper. We

1536 call attention to anything which we do not think is proper.

Mr. LADD:

Q. What has been your experience, Mr. Ludlam, in connection with railroads, or as an accountant, independent of your connection with the firm of Haskins & Sells—I mean previous to that?

A. I began my experience with the Pullman Company as an office boy, in the Secretary's office, when I was fourteen years old. Two years later I left there, on account of my health, having to go West, but prior to leaving there I had been advanced to be general book-keeper of the capital stock account and records of the Pullman Company.

I went to Albuquerque, N. M., and worked for several years in the

Auditor's office of the Atlantic & Pacific Railroad Company. I was in all departments of the Auditor's office.

From the Atlantic & Pacific Railroad I went to Colorado Springs, as Assistant General Book-keeper of the Colorado Midland Railroad Company, in the Auditor's office, subsequently becoming General Book-keeper in the Treasurer's office of the same road.

I resigned from that position, to go with J. J. Haggerman, a capitalist of Colorado, and in connection with my association with him I was accounting officer and Auditor of, some seventeen different railroad, mining, construction, irrigation and land companies.

I subsequently went to Eddy, New Mexico, as Auditor of the Pecos Valley Railway Company—a small road down in New
1537 Mexico, that Mr. Haggerman was building. I went there for the purpose of representing Mr. Haggerman's interests, as well as being Auditor of the Railroad, Mr. Haggerman having extensive interests in that country.

I resigned that position in 1893, I think it was, to go with Haskins & Sells.

Q. And you have been with them ever since, have you?

A. Yes, sir; continuously.

Q. From a practical point of view, is your position with Haskins & Sells a superior or important position, compared with other men who are employed by them, or is it subordinate?

A. Why, it is a superior position.

I mean by that, I am one of the principals of the firm, and, I might say, have the second largest interest in the firm.

Q. Is it a part of your duty, then, to give directions to the employees of the firm?

A. Yes sir.

Q. As to how work shall be performed in any given case?

A. Yes sir.

Q. And to supervise the work, as you have an opportunity?

A. Yes sir.

1538 Q. Has your firm been employed by the State of iMssouri in the Maximum Rate litigation, a part of which is now on hearing?

A. Yes, sir.

Q. What was your employment by the State for, in connection with which part of the litigation, in the first instance?

A. In connection with the litigation against the Wabash Railroad and the Missouri Pacific Railway Company?

Q. When did your men enter on that work?

A. On the 18th day of June, this year?

Q. How many men have you had at work, on an average, daily?

A. I should say about six.

The MASTER:

Q. Are you referring to this present litigation?

Mr. LADD: Yes, Your Honor. The Wabash and the Missouri Pacific.

Q. Where has your examination been conducted?

A. At St. Louis.

Q. The General Offices of the Wabash and the books of the Wabash Railroad Company are in St. Louis?

A. Yes, sir, and also of the Missouri Pacific.

Q. You have not concluded your examination fully of either of those, have you?

A. It is practically completed on the Wabash but it is not completed on the Missouri Pacific.

Q. Have you been from time to time supervising that
1539 work and advising how it should be done?

A. Yes, sir.

Q. And looking into the results?

A. Yes, sir, I have kept in touch with that work ever since it first started.

Q. You have been out west and have attended some of these hearings?

A. Yes, sir.

Q. At both hearings in Chicago you were present?

A. At one I was present. At the first hearing I was present, and I have been present here in Kansas City.

Q. Did you hear all of the testimony of Mr. Sturgis, which was given at the first hearing in Chicago?

A. Yes, sir. I may say, that the testimony I did not hear I have since read.

Q. Since it was written up?

A. Yes, sir.

Q. Have you in connection with your work, on the particular work on the Wabash case and the Missouri Pacific case been consulted by counsel for the State, as to the Burlington case?

A. Yes, sir.

Q. Have you looked into that in connection with your other work, to some extent?

A. Yes, sir, we have looked into it, I might say as to the general questions without going into the detail of the figures presented.

1540 Q. You have not examined the books of the Burlington Company?

A. No, sir, nor have we attempted to verify the details of the statements presented.

Q. I will ask you whether it is practicable to prepare a statement from the way-bills of a railroad company, classifying its freight, its earnings and its tonnage, between what has been called by some witnesses in this case, through interstate, second class interstate, and State freight?

A. It is entirely practicable. And, considering the volume of the business, it could readily be prepared. By that I mean that there are no technical features in connection with it, which would make it involved. It is simply a question of the amount of work which would be required to prepare such a statement.

Q. Could figures be made up from the way bills of a railroad, which would show the tons, the ton miles, the earnings, the earnings

per ton and per ton mile, on through interstate freight, divided between carload and less than car load lots; and second class interstate freight, divided between carload and less than carload lots; and on State freight divided in the same way?

A. Yes, sir. A statement showing all the details you mention could be prepared.

Q. From what?

A. From the way-bills of the Company.

Q. I will ask you if in your examination of the books of the Missouri Pacific Railroad—or, in the first place can you
1541 state whether, in a general way, the rates charged by the Missouri Pacific Railroad and the Burlington Railroad, in the State of Missouri, on the same classes of freight, are for the same service, substantially the same?

A. In my judgment they would be substantially the same.

Q. Have you made an examination of any of the way-bills of the Missouri Pacific Railway Company with a view of ascertaining the number of tons, the ton miles, the revenue per ton mile, and so on?

A. Yes, sir.

Q. How did you make that examination? From their way-bills?

A. From the Freight Journals which are kept in the Auditor's office of the Missouri Pacific Railway and referring to the way-bills wherever it was necessary to prove the accuracy of the Journals. I might say, that the Journals are tabulations of the way-bills, prepared by the Auditor.

Q. That work has been done under your supervision, by your employees whom you can trust to do it, who have been engaged in this general examination of the Missouri Pacific and Wabash Companies?

A. Yes, sir.

Q. What period of time did that cover?

A. The work we have done on the Missouri Pacific way-bills?

Q. Yes.

A. I think I have been working——

Q. I don't mean that, but what period of time, in order
1542 to ascertain certain results I am going to ask about, did you cover?

A. The month of October? I might say that we have not yet completed the work.

Q. But as far as you have gone it was confined to the month of October, 1905?

A. Yes, sir.

Q. What part of the business of the Company during the month of October, 1905, have you been able to cover so far?

A. Our statement has been based on the way-bills received at the different stations of the Missouri Pacific Railroad. So far we have covered the Stations, St. Louis, Mo.; Kansas City, Missouri; Kansas City, Grand Avenue Station; Leavenworth, Kansas; Atchison Kansas, St. Joe, Missouri; all points on the main line between St. Louis, Missouri, and Kansas City, Missouri a distance of 283 miles; all

points between Kansas City, Missouri and Atchison, Kansas, a distance of 47 miles, all of it is in Kansas; Omaha and South Omaha, Nebraska. Representing, roughly, about 90% of all the Missouri State business and about 50% of all the Missouri interstate business.

Mr. HAGERMAN:

Q. Do you mean Omaha as a station?
A. Yes, sir, Omaha as a station.

Mr. LADD:

Q. Does it take in the stations between Atchison and Omaha?
A. No, sir.
Q. Does it take in the stations between Kansas City and Atchison?
A. Yes, sir.
1543 Q. It does not take in the stations between Atchison and Omaha?
A. No, sir.
Q. But it does take in Omaha?
A. Yes, sir, and South Omaha.
Q. Now let me see if I understand you? It takes in St. Louis, Kansas City, St. Joe, Leavenworth, Atchison, all points on the main line between St. Louis and Kansas City, all points between Kansas City, Missouri and Atchison, Kansas and also the stations of Omaha and South Omaha, Nebraska?
A. Yes, sir, and also the station at Grand Avenue at Kansas City.
Q. Is that for freight received or shipped from those stations?
A. That is the freight received at those stations during the month of October, 1905.
Q. Freight of all kinds?
A. Yes, sir, freight of all kinds. Freight of all kinds that touched the State of Missouri in transit.

Mr. HAGERMAN:

Q. But it is freight received?
A. Yes, sir. Made up upon a received basis, which I may say is the basis used by the Missouri Pacific in compiling their freight earnings, and in keeping their accounts.
Q. What proportion of the entire freight business of the Missouri Pacific Railway Company do you estimate that this covers for that month: Can you make any estimate?
A. We estimate roughly that this statement covers about 90% of the State business and about 50% of the Interstate
1544 business in which Missouri is interested?
Q. Take the interstate business: I want to get at the number of tons. Did you arrive at that?
A. Yes, sir.
Q. Those are actual figures based on actual transactions?
A. Yes, sir.
Q. Taken from their books and their way-bills?
A. Yes, sir.
Q. How many tons of interstate freight in carload lots was there?

A. 269,743,057 tons.
Q. And how much in less than carloads?
A. 4,224 and a fraction tons.
Q. What is the percentage of interstate freight in carload lots?
A. To the total freight?
Q. Yes.
A. 69.54 per cent.

Mr. HAGERMAN: Why is it necessary to go through this and ask all these questions?
Mr. LADD: I want to call the Master's attention particularly to some matters.
Mr. HAGERMAN: The statement will speak for itself.
Mr. LADD: I don't want to dump it in without any explanations about it, I want to ask some questions about it.

Q. What per cent of interstate freight in less than carload lots—what percentage in tons does that freight bear to all the tons of the State?
A. 1.08.
1545 Q. What was the gross revenue from the carload-interstate freight?
A. $170,862.73.
Q. And from the less than carloads?
A. $20,381.37.
Q. What was the percentage of total revenue derived from the interstate carload freight?
A. 60.22 per cent.
Q. And from the interstate less than carload freight?
A. 7.15 per cent.
Q. What was the average amount received per ton for the carload interstate freight?
A. .63342 cents.
Q. You mean 63 cents and a fraction?
A. Yes, sir.
Q. That is the average amount received for hauling each ton of freight independent of the length of the haul?
A. Yes, sir. Each ton of interstate carload freight.
Q. Now what was the amount received for hauling each ton of less than carload interstate freight?
A. $4.82 and a fraction.
Q. That is independent of the length of the haul?
A. Yes, sir, independent of the length of the haul. That was the amount received per ton.
Q. What was the number of tons hauled one mile, of carload interstate freight?
A. 29,291,530 and a fraction ton miles.
1546 Q. And the number of tons one mile, of less than carload interstate freight is what?
A. 846,350 and a fraction ton miles.
Q. What was the percentage of the total ton miles of interstate freight to all of the freight, state and interstate?

A. You mean interstate freight or interstate carload freight?
Q. Carload freight.
A. The percentage of interstate carload freight ton miles to the total ton miles of all freight in the State of Missouri was 81.08 per cent.
Q. And of less than carload freight?
A. 2.34 per cent.
Q. What was the average revenue per ton mile of carload interstate freight?
A. .58331 cents.
Q. What does that mean. 58/100 of a cent?
A. 58/100 of a cent and a fraction.
Q. What was the average revenue per ton mile for less than carload interstate freight?
A. 2.4 and a fraction cents.
Q. What was the average length of haul of interstate carload freight?
A. 109 miles.
Q. And of less than carload interstate freight?
A. 200 miles.
Q. Does the statement which you have prepared, the result of your investigation, show the number of tons of State
1547 carload freight?
A. Yes, sir.
Q. How much was it?
A. 109,106 and a fraction tons.
Q. And of less than carload State freight, how much?
A. 4,636 and a fraction tons.
Q. What percentage of the total tonnage handled by the Company was the State carload freight?
A. 28.13 per cent of the total tonnage handled by the Company in the State of Missouri.
Q. And of less than carload freight, how much?
A. 1.25 per cent.
Q. What was the gross revenue, derived from State carload freight?
A. $68,900.67.
Q. And on less than carload freight?
A. $23,572.97.
Q. What was the percent of the revenue derived from State carload freight to the entire revenue derived from all kinds of freight?
A. 24.29 per cent.
Q. And of less than carload freight?
A. 8.31 per cent.
Q. What was the amount received per ton for hauling State carload freight?
A. 63 and a fraction cents.
Q. And for less than carload State freight?
A. $4.87 and a fraction cents.
1548 Q. What is the average revenue per ton per mile from the State carload freight?
A. 1 and 26/100 cents and a fraction.

Q. The average revenue from less than carload State freight is how much per ton per mile?

A. 4 and 52/100 cents and a fraction.

Q. What is the average length of haul as between those two classes of freight?

A. The average length of haul of the State carload freight was 50 miles; and of the less than carload state freight was 108 miles.

Q. You have shown in this statement, (which I will introduce presently as Exhibit No. 16—the total number of tons of all kinds of freight, the percentage of the total tons, the gross revenue from all the freight, the percentages of total revenue, the average amount received for each ton of all the freight, the number of tons one mile for all the freight, the percentage of the total ton miles, the average revenue per ton per mile on all the freight, and the average length of haul of all the freight, under proper headings?

A. Of all the freight handled by the Missouri Pacific Railway Company in the State of Missouri.

Q. Look at the next to the last column, down toward the foot, if you please, and state what you find to be the average revenue per ton mile for all freight of all kinds?

A. 785/1000 of a cent.

1549 Q. What was the average revenue per ton mile of the State less than carload freight ?

A. 4 and 52/100 cents and a fraction.

Q. What is the proportion between those two last items approximately?

A. It is about one sixth. The average from all freight would be a little less than one seventh, between one sixth and one seventh of the average per ton per mile realized from all State less than carload freight.

Judge SPENCER:

Q. What was the last comparison you made. The total average revenue per ton mile?

A. .785 cents represents the average revenue per ton per mile upon all freight handled by the Missouri Pacific.

Q. Including everything?

A. Yes, sir, State and interstate, carload and less than carload freight.

Q. You compared that with what?

A. With the revenue received per ton per mile for the State less than carload freight, which is 4.52 and a fraction cents.

Q. So in one instance you have the average revenue from all classes of business compared with State less than carload revenue?

A. Yes sir.

The usual hour for recess having arrived, recess was taken until 2 o'clock p. m.

1550 After recess on Wednesday, November 14th, 1906, the following proceedings were had:

Mr. LADD:

Q. Mr. Ludlam, I will get you to state, from your experience in the employment of Railroad Companies, and in the examination and auditing of the books of Railroad Companies, and your examination and the information you have obtained regarding the railroad business in Missouri, since your firm was employed by the State, and from the examination of the books of the Wabash and the Missouri Pacific Companies, and the information which you have obtained regarding conditions in Missouri, from attending these hearings which have been held heretofore, whether in your opinion it costs any more in proportion to the revenue to do the State freight business than the other freight business?

Mr. HAGERMAN: That is objected to upon the ground that the witness is not a competent witness to pass upon the question, and not such an expert as would be recognized to give an opinion upon that subject.

Mr. LADD: He is as competent as Mr. Sturgis.

Mr. HAGERMAN: We did not ask Mr. Sturgis such a question.

Mr. LADD: You did, and you had him swear to it several times.

The MASTER: He may give his opinion if he has one; the objection is overruled.

1551 A. No, sir, I don't think it costs any more in proportion to revenue to do State freight business than to do interstate freight business?

Q. I will get you to state if you made some examinations and had some figures made as the result of those examinations, of actual transactions in the case of the Missouri Pacific Company, being the same examination I referred to this morning in your testimony?

A. Yes, sir.

Q. How did you arrive at the probable relative cost of doing State business as compared with other business. Did you in the first place ascertain accurately the earnings per ton mile?

A. Yes, sir.

The MASTER: Are you now referring to his investigations in the case of the Missouri Pacific and Wabash?

Mr. LADD: To the Missouri Pacific.

Q. I want to refer again to the particular volume of business, or the business which you mentioned this morning, on the Missouri Pacific. You have already given the number of tons of interstate and State business, divided up into carload and less than carload lots of both, and the revenue, the number of tons one mile, the average length of haul, as shown in your statement, which will be marked Exhibit 16?

A. Yes, sir.

Mr. LADD: I will offer in evidence the paper referred to by the witness.

Said paper is marked "Defendant's Exhibit 16" and is in the words and figures following, to-wit:

1552 Q. During that period, the month of October, and covering the stations you have already mentioned, on the Missouri Pacific according to their books and way-bills, what were the earnings per ton mile on interstate carload freight?

A. 58/100 and a fraction of a cent. To be exact .58331. In round figures it is 5 and 84/100 mills.

Q. Assuming the expense of the interstate carload business to be 50 per cent of the gross earnings, what would the expense of earning that be?

A. 2 and 92/100 mills.

Q. And what would be the profit per ton per mile?

A. 2 and 92/100 mills.

Q. What, from actual transactions, did you find as the result of your investigations were the earnings, per ton mile on State carload freight?

A. 12 and 60/100 mills.

Q. Assuming that interstate carload freight costs one-half of the revenue to earn it, and that state carload freight costs twice as much per ton to transport and deliver it, how much would that be for the expense connected with the State carload freight?

A. 5 and 84/100 mills per ton per mile.

Q. And at that what would be the profit per ton per mile on State carload freight?

A. 6 and 76/100 mills per ton per mile.

Judge SPENCER:

1553 Q. Are you assuming the haul is the same in both instances?

A. No, sir, it is reduced to a per ton per mile basis.

Q. Did you use the same length of haul in the two cases?

A. No, sir, I used the actual haul to determine the per ton per mile, in both cases.

Mr. LADD:

Q. In the case of interstate carload freight, what is the ratio of cost to earnings, 50 per cent isn't it?

A. 50 per cent, yes, sir.

Q. That is your assumption?

A. Yes, sir.

Q. Based upon that assumption, what is the ratio of earnings in the case of State carload freight, if it costs twice as much to haul a ton a mile as it costs to haul a ton a mile of interstate carload freight?

A. 46.35 per cent.

Q. According to the books of the Company what were the earnings per ton per mile on interstate freight less than carload lots?

The MASTER: You are referring now to the Missouri Pacific Company?

Mr. LADD: Yes, sir.

A. 24.08 mills per ton per mile.

Q. Assuming the cost per ton per mile of doing the interstate less than carload business was three times as much per ton per mile

as the interstate carload business costs, how much would be the cost of that?

1554 A. 8.76 mills per ton per mile.

Q. And what would be the profit, if any, on the interstate less than carload on that basis?

A. It would be 15.32 mills per ton per mile.

Q. The profit then on State carload business per ton per mile, according to that theory, is more than twice as much as it is on interstate carload business: Is that right?

A. Yes, sir. About two and a half times, roughly.

Q. How does the profit on interstate less than carload freight compare per ton per mile with interstate carload freight?

A. On the basis of costing three times as much per ton to handle you mean?

Q. Yes.

A. The profit would be, roughly, about six times as much per ton per mile on the interstate less than carload business.

Q. Suppose the interstate less than carload business costs five times as much per ton per mile to handle it, what would be the profit on that basis?

A. 9.48 mills per ton per mile.

Q. How much more is that in proportion than the profit on interstate carload business—between three and four times as much?

A. It is between three and four times as much per ton per mile.

Q. Assuming that the cost of doing the interstate less than carload business is seven times as much per ton mile as the interstate carload business, making a cost of 20.44 mills per ton per

1555 mile, how much is the profit on that basis per ton per mile?

A. 3.64 mills per ton per mile.

Q. That is what percent greater approximately than the profit on the interstate carload business?

A. Roughly, about 40 per cent.

Q. From these records of the Missouri Pacific for this period, what did you ascertain their earnings were per ton per mile upon State less than carload freight?

A. 45.21 mills.

Q. Suppose you assume the cost per ton per mile of doing the State less than carload business is three times as much as the interstate carload business, what would that make the cost per ton per mile of doing the State, less than carload business?

A. 8.76 mills per ton per mile.

Q. And what would be the profit per ton per mile?

A. 36.45 mills per ton per mile.

Q. Suppose the cost of that less than carload State business was five times per ton per mile the cost of the interstate carload business, what profit would be left per ton per mile on that basis?

A. 30.61 mills per ton per mile.

Q. Suppose this cost was seven times as much, what would be the profit, if any?

A. 24.77 mills per ton per mile.

Q. Now take it upon the basis of being seven times
1556 much, what would be the ratio of cost to earnings?
A. 45.21 per cent.
Q. On the basis of the State less than carload business costing fiv
times as much, what would be the ratio of cost to earnings?
A. 32.29 per cent.
Q. On the basis of its being three times as much, what would b
the ratio of cost to earnings?
A. 19.38 per cent.

Judge SPENCER:

Q. May I ask how he got the first cost with which he made thes
comparisons?
A. I took as my unit of cost per ton per mile a ratio of 50 pe
cent of the earnings derived from interstate carload business.
Q. Is that an arbitrary sum, 50 per cent?
A. Yes, sir.
Q. You could take 100 per cent as well?
A. Yes, sir. I might say incidentally that 100 per cent taken as
the basis, or unit, would show no profit on interstate, and yet show
a large profit on State business.
Q. And would 25 per cent do the same thing, except showing less
than the 50?
A. 25 per cent would not show a loss on interstate.
Q. This comparison all rests upon the first assumption of cost that
you made?
A. No, sir, because any per cent you use, the relation would be
the same. We have not attempted, however, to determine these
figures, and we do not attempt to state, that 50 per cent is the correct
figure.

1557 Mr. LADD:

Q. You have prepared a statement showing these figures?
A. Yes, sir.

Mr. LADD: I will offer in evidence the paper referred to by the
witness.
The paper referred to is marked "Defendant's Exhibit 17" and
is in the words and figures following, to-wit:

1558 Q. You have already stated that the results show that the
earnings per ton per mile on interstate freight were 5.84
mills?
A. Yes, sir.
Q. Assuming that the cost per ton mile for earning that is 60
per cent of the earnings, what would be the cost in that case?
A. 3.50 mills per ton per mile.

Mr. LADD: The questions I asked the witness before were on the
basis of operation in connection with interstate carload business,
using as the unit of cost the ratio of 50 per cent. Now I am using
the ratio of 60 per cent.
Q. What would be the profit on interstate carload business?

A. 2.34 mills per ton per mile.

Q. Have you prepared a statement showing what the profit would be on State carload freight if it costs twice as much to make the earnings per ton per mile as the interstate carload business costs and showing also the net earnings on interstate less than carload freight, if it costs relatively three times, five time- and seven times as much per ton per mile to earn it as to earn the interstate carload earnings; and also showing the net earnings per ton mile for handling State less than carload freight upon the basis of its costing three times, five times and seven times as much per ton per mile as the interstate carload business costs, and upon the assumption all the time that the interstate carload business expenses are 60 per cent of the gross earnings?

A. Yes, sir.

1559 Q. Is this it that I show you?

A. Yes, sir.

Mr. LADD: I offer in evidence the paper identified by the witness. The paper referred to is marked "Defendant's Exhibit 18".

Said paper is in words and figures following to-wit:

1560 Q. In preparing these statements have you divided the inter-state freight between what in this case has been spoken of as through inter-state freight and second class inter-state freight?

A. No, sir.

Q. Why not?

A. Because the question of there being a division in the inter-state freight business, as between through inter-state and second class inter-state freight, had not been raised, when we started the work of preparing these statements.

The MASTER:

Q. You mean by "Second class inter-state business", as I understand it, freight moving into or out of the State of Missouri?

Mr. HAGERMAN: Mr. Willard, in his testimony, divided the inter-state business into two classes.

Mr. LADD:

Q. Could such a division have been made if you had started out to make it in that way?

A. Yes, sir, at a very trifling addition to the amount of time required.

Q. But you had gone too far in that work when that division was first mentioned in the testimony?

A. At the time we started to prepare this statement, if we had known that was wanted, we could have classified it that way, because we had that information on each way-bill before us at the time.

—. If you had divided the inter-state car-load business between through inter-state and second class inter-state freight what in your judgment would have been the revenue per ton mile on the

1561 through inter-state carload freight, as compared with the revenue derived from all inter-state carload business, as shown on these statements?

A. It would have been considerably less per ton per mile.

Q. Have you any opinion you could give as to how much less, approximately?

A. Yes, sir. In my judgment, based largely upon the figures we have seen in connection with the Missouri Pacific, I do not think the revenue from the through inter-state business would have averaged over five mills per ton per mile, at the outside, and I am inclined to think it would have been as little as four and a half mills per ton per mile.

Q. Instead of what?

A. Instead of .584 mills per ton per mile as derived from all inter-state business.

Q. On what do you base that opinion?

A. Because the longer the haul the thinner the revenue, as a general proposition. And, furthermore, there is a great deal,—I say a great deal—there is some of the inter-state business where the rates would be very high, for instance, freight originating in small towns in Iowa and running to small towns in Missouri or vice versa; or freight originating in St. Louis or Kansas City and running out of the State to non-competitive points.

Q. What did you mean by the expression "The longer the haul, the thinner the revenue"?

A. As a general proposition, the further you go the more
1562 competitive you meet and the less revenue you derive per ton per mile for hauling the freight.

Q. You haul it further but you get less per mile for hauling it?

A. Yes, sir.

Q. From these statements does it appear that the revenue on the State carload business per ton per mile was more than twice as much as on the inter-state carload business?

A. Yes, sir, nearly two and one-half times as much; or, to be exact, they only received 46.28 per cent as much for hauling a ton of inter-state freight a mile as they received for hauling a ton of carload State freight a mile.

Q. What was the average revenue per ton per mile on all the inter-state freight, both carload and less than carload?

A. .63456.

Q. That is 6 mills and a fraction?

A. Yes, sir, 6 mills and a fraction.

Q. What was the average revenue on all the State freight, both carload and less than carload per ton per mile?

A. 1.54425 cents.

Q. A little over one and one half cents per ton per mile?

A. Yes, sir.

Q. As against 6 mills?

A. Yes, sir.

Q. On the average what was the percentage of the revenue per ton mile on all the interstate freight as compared with all the State freight?

1563 A. 41.09 per cent.

Q. That is to say, where the Company would get $41.09

in the case of interstate freight it would get $100 in the case of State freight?

A. Yes, sir.

Judge SPENCER:

Q. Is that the difference in the rate or in the distance hauled?

A. The difference in revenue per ton per mile.

Q. Was that controlled by the freight being hauled a certain distance, or the difference in the rate?

—. He gets the rate per ton in one instance hauled 10 miles and in another instance hauled 100 miles.

Mr. LADD: It is the average of all.

Judge SPENCER:

Q. Is this rate reduced to $41.00 by reason of the long haul that thinned that rate?

A. It is reduced by the thin revenue on the interstate as compared with the State business.

Q. Is that made thin by the long distance hauled?

A. No, sir, not all together.

Q. To what extent?

Mr. LADD: I beg pardon, but you will have an opportunity to cross examine the witness.

Judge SPENCER: I merely wanted to understand what his figures meant.

A. The length of the haul would not affect it when reduced to a ton mile basis.

Mr. HAGERMAN:

Q. Where you use that per cent, 41.09, as against the $100, didn't you mean that the $100 represented all, so that the 41.09 was
1564 interstate, and the balance State freight?

A. No, sir, I meant that the Missouri Pacific received on an average 41.09 per cent as much for hauling a ton of interstate freight a mile as it received for hauling a ton of State freight a mile.

Q. If its revenue is $41.09 for interstate, how much will it receive for State?

A. $100.

Mr. LADD:

Q. The average amount received per ton on interstate carload freight was 63 and a fraction cents?

A. Yes, sir, the amount received per ton.

Q. That is not per ton mile?

A. No, sir, that is the amount received on the average for each ton of interstate carload freight handled.

Q. 63 and a fraction cents per ton?

How far was that interstate freight hauled, on an average?

A. 109 miles.

Q. And how far was that State carload freight hauled on an average?

A. 50 miles.

Q. So that, taking all State carload freight and all of the interstate carload freight handled, the Company received on an average practically the same amount of money for hauling a ton of State carload freight 50 miles as it received on an average for hauling a carload of interstate freight 109 miles: Is that it?

A. Yes, sir.

1565 Q. You have stated, and your statement shows, that the average amount received per ton, not per ton mile, for each ton of interstate less than carload freight was $4.82 and a fraction?

A. Yes, sir, that is correct.

Q. How far on the average was each ton of that less than carload interstate freight hauled?

A. 200 miles.

Q. You have also stated, or your statement shows, that the amount received per ton on the average for each ton of less than carload State freight was $4.87 and a fraction: Now what was the average length of that haul of that less than carload State freight?

A. 108 miles.

Q. So the Company received more on the average, for hauling a ton of State freight a distance of 108 miles than it did for hauling a ton of interstate freight 200 miles: Is that right?

A. Yes, sir, on the less than carload freight the Company received actually less revenue per ton on the inter-state than on the State freight, although the interstate was handled 200 miles and the State freight was handled 108 miles.

Q. These last two statements which have been submitted by you, being Exhibits Nos. 17 and 18, show, do they, that the ratio of profit on the State business is greatly in excess of the ratio of profit on the interstate business, upon the basis or allowing that it costs twice as much per ton per mile to do the State carload business as to do the interstate carload business; and three, five or seven times as

1566 much per ton per mile to do the less than carload business as to do the carload interstate business?

A. Yes, sir.

Q. In your opinion do you believe it costs twice as much per ton per mile to do the State carload business as to do the second class interstate carload business?

A. No, sir.

Q. Why?

A. Well, because in my opinion the only additional cost of doing the State carload business as compared with doing the second class interstate carload business, would be in the placing of the empty cars for loading, in the case of State business, as compared with an interstate shipment that did not originate in the State, or, on the other hand, the hauling away of the empty car, after it was emptied of the State shipment, as compared with an interstate shipment that did not terminate within the State.

Q. Right at that point, on the State carload business, which has already been referred to, but it is germane right here, who loads and un-loads the cars?

A. On State carload business, the consignor and the consignee.

Judge SPENCER:

Q. You are speaking of the Missouri Pacific now?
A. I was speaking generally of all railroads.
Q. That is the general custom?
A. Yes, sir, the general custom.

Mr. LADD:

Q. What do you mean, by the placing of the empty car
1567 for loading, in the case of a State carload shipment?
A. Well, whereas in a State shipment the car would have to be placed ready for loading, and after it has been transported and set out and unloaded, it might have to be hauled away empty, the interstate shipment only originates or terminates in the State. It does not, in my judgment, require any more switching or handling at the point of origin, than the carload of second class interstate does at any point it enters the State. I am speaking of terminals like St. Louis, Hannibal, Kansas City or St. Joseph, where of course the bulk of the interstate carload shipments are handled.
Q. Would there be any greater actual hauling expense per ton mile on the State than on the interstate business?
A. No sir.
Q. Suppose the State shipment had two terminals, as compared with the interstate shipment having one terminal or less, what would constitute the increase in the State shipment as compared with the interstate?
A. The additional terminal.
Q. What proportion, in your judgment, is the terminal expense in handling freight as compared with the total expense of the railroad?
A. It would be a very small proportion of the total expenses of a railroad company, particularly on carload business.
Q. On carload business, what would be the terminal expense? Of what would it consist?
1568 A. Switching and making up of the train and getting the car into the train.
Q. It would not be any loading or unloading, because that is not done by the Railroad Company?
A. It would also be the setting of the car out empty for loading and in case the car was not loaded where unloaded, the hauling away of the empty car when it was unloaded.
Q. Are there any expenses which apply to interstate freight, which do not apply to State freight?
A. Yes, sir.
Q. What are they?
A. For instance, the local rates of Railroad Companies especially on non-competitive business, are seldom changed. The agents and station force become familiar with them; consequently, they require little or no attention from the traffic department or traffic officials. At the station there is very little or no delay in billing local shipments for the reason that the agent can apply the rates and get them off his hands; whereas, in the case of shipments go-

ing a long distance they may have to be held, sometimes for several days perhaps, awaiting quotations from the traffic department; this requires holding and extra handling of the interstate business at the stations. In the auditor's office the revising of billing on the local shipments is a very simple matter; whereas, on through business the rates are involved, and it requires the highest salaried clerks to revise that billing, and in the case of inter-line billing with other railroads, to apportion the revenue, and very much more time pro-
portionately for each waybill; then, too, claims for over-
1569 charges occur much more frequently on such shipments, and
when they do are much more involved and require more time, because they have to be settled with other roads, which involves correspondence and frequently the time and attention of the highest salaried men employed by the Company: All the expenses of outside agencies are directly chargeable to the competitive business.

Q. Mr. Ludlam, in your judgment is the cost per ton mile of handling State less than carload business any greater than the cost per ton mile for handling less than carload interstate business?

A. No, sir.

Q. Why?

A. The cost of handling interstate less than carload business, in my judgment, would be more than handling the State less than carload business for two reasons principally:

The first one is, that the majority of interstate less than carload business, is unloaded at the station and then re-loaded and then unloaded at destination. That means that interstate less than carload business is loaded once and unloaded twice. Whereas, State less than carload business is loaded once and unloaded once.

Q. Interstate less than carload business is loaded twice and unloaded once?

A. Yes, sir, that is right. Assuming that the distance were the same. But, as a matter of fact, we find from an analysis of the Missouri Pacific way-bills that the interstate less than carload business moves on an average 200 miles as compared with the State less
than carload haul of 108 miles.
1570 Speaking generally less than carload or package freight, is
unloaded and re-loaded at each terminal; consequently the longer the haul, the more frequently the freight is handled. The interstate, less than carload freight, is hauled on an average 200 miles, as compared with the State less than carload business haul of 108 miles.

Judge SPENCER:

Q. Have you actual information on the subject, or is that expert testimony?

A. I have actual information as to the distance of the haul.

Q. As to the number of times loaded and unloaded?

A. That is my judgment, based upon my railroad experience.

Q. You have no actual knowledge then?

A. No, sir, not from an analysis of these way-bills. Of course,

the way-bills would not show where the freight was loaded or unloaded, unless there happened to be a shortage.

Mr. LADD:

Q. Have you prepared a statement showing the relative cost of the freight and passenger business to the freight and passenger earnings of the Railroad Companies in the State of Missouri during the year 1905?

A. Yes, sir, I have prepared a statement of the relative cost of the freight business as compared with the freight earnings; and the passenger business as compared with passenger earnings of the C., B. & Q. Railway Company for the year 1905; based first upon the freight and passenger earnings in Missouri, as shown by Complainant's Exhibit No. 1, page 1, and by distributing the mis-
1571 cellaneous earnings between the freight and passenger business so as to get the total earnings to apply against the total expenses.

Q. From that statement, what did you make the per cent of freight expenses to freight earnings in Missouri?

A. Before giving that ratio, I should like to make an explanation:

Certain of these items, where I was unable to distribute them what might be termed accurately, I have apportioned them on the basis of half and half between freight and passenger.

I have so apportioned the rental; although probably if I had the detail of it, that ratio would not apply to either class of earnings; but it would not affect materially the ratio shown.

Q. You have divided the rentals shown by two, and put half to passenger and half to freight?

A. Yes sir. Of course, that is approximately correct.

Q. What does that show?

A. That shows the ratio of freight expenses to freight earnings to be 53.55 per cent on the C. B. & Q. Railroad during 1905; and that the ratio of passenger expenses to passenger earnings was 64.52 per cent.

Mr. LADD: I will offer in evidence the statement, identified by the witness.

The paper referred to is marked "Defendant's Exhibit 19," and is in words and figures following, to-wit:

1572 Q. According to this the ratio of passenger expenses to passenger earnings is considerably in excess of the ratio of freight expenses to freight earnings?

A. Yes, sir.

Q. That is to say, it cost on the average, in the year 1905 more to earn a dollar of passenger earnings on the Burlington road than it did to earn a dollar of freight earnings?

A. It cost more in the State of Missouri in these figures (indicating Exhibit 19). In the figures given by Mr. Sturgis yesterday, of freight and passenger earnings and expenses on the entire system, it showed that it also cost more on the entire system of the Burling-

ton, to earn a dollar of passenger earnings than it did to earn a dollar of freight earnings.

Q. I wish you would state what is the result of your experience, observation and examination of railroad accounts, and the auditing of the books of railroad companies, as to the general proposition, whether the per cent of operating expenses is greater or less in the case of passenger than it is in the case of freight business?

A. As a general proposition, the per cent of profit in freight business is greater than the per cent of profit in passenger business.

Q. That is the experience of railroads generally?

A. The general experience is the same relatively as that of the C., B. & Q., as shown in this statement.

Q. Would there be any exception to that in the case of
1573 any railroad?

A. Yes, sir.

Q. Please illustrate.

A. I should say, in the case of the New York, New Haven and Hartford Railroad although I haven't their figures, and am speaking just generally, this condition would be reversed, for the reason that their passenger earnings are greater than their freight earnings. They have a tremendous passenger traffic and very little competition between some of their principal points and they run only those trains that they can run full.

Q. They do an exceptionally large passenger business as compared with most other railroads: Is that it?

A. Yes, sir. That is one illustration. Of course, there are others; but they are in the great minority.

Q. They are in the East, are they?

A. Generally speaking I should say yes.

Q. If the ratio was 53.55 per cent of freight expenses to freight earnings during 1905, of the Burlington road, what would you say about the proportionate cost of doing the through interstate business relative to earnings: Was it less per ton per mile than the cost of doing the other freight business? In other words, do you think your assumed basis in some of these statements of 50 per cent operating expenses to a certain class of freight earnings is a fact?

A. Based on the testimony which has been given in this case that the ratio of cost of the interstate freight business, is less
1574 than the ratio of cost of all freight business, and if the ratio of cost of all freight business is 53 per cent, then certainly 50 per cent as the ratio of interstate business would be fair. Personally, I think the ratio of interstate business is more than 50.

Q. In that statement submitted last, of passenger expenses, there is a note, or perhaps it appears in the body of the statement, which you formulate partly on Exhibit 6, that item of $917,418.75 for replacement fund, is not embraced, is it?

A. No, sir.

Q. You just went according to Exhibit 6?

A. Yes, sir, the expenses as shown by the statement Exhibit 6.

Mr. HAGERMAN:

Q. In this statement Exhibit 19 you have not taken into consideration the expenses as shown by Exhibit 1?

A. No, sir, I have not taken the expenses as shown by Exhibit 1, but the expenses shown by Exhibit 6.

Mr. LADD: Exhibit 1 to a very large extent corresponds with Exhibit 6 according to Mr. Sturgis' statement.

Mr. HAGERMAN: Down to a certain point they correspond.

Mr. LADD: Mr. Ludlam, have you prepared a statement showing the gross earnings per mile of line, maintenance of way and structures, expense per mile of line, and maintenance of equipment per mile of line, for all the railroads in the United States for the eleven years ending with the year 1904, which shows the increase
1575 on each item for those years, both per mile of line operated and by percentage?

A. Yes, sir.

Mr. LADD: I will offer in evidence the paper referred to by the witness.

Said paper referred to is in the words and figures following, to-wit:

1576 Q. What does this statement show as to the gross earnings, the increase of them per mile, from what sum to what other sum?

A. It shows that the gross earnings of all the railroads in the United States increased from $6,109 per mile of line in 1894 to $9,306. per mile of line in 1904.

Q. How is the expense for maintenance of way and structures increased, if it has increased per mile of line?

A. From $817.31 to $1231.26.

Q. How has the maintenance of equipment expense increased, if at all?

A. From $642.36 to $1259.52, being an increase in the ten years of $3,197. per mile of line in gross earnings, and an increase of $413.65 per mile of line in maintenance of way and structures expense, and an increase of $617.17 per mile of line in maintenance of equipment expense; or 52.33 per cent of increase in the gross earnings, 50.59 per cent increase in the maintenance of way and structures, and 96.08 per cent increase in maintenance of equipment expense.

Q. In your opinion, if the expenditures as shown by these statistics for maintenance of way and structures and maintenance of equipment, had been confined to keeping the property in good condition, year by year, would they have been as much?

A. In my judgment, if the charges which have been made to maintenance of way and structures and maintenance of equipment, had been confined to normal maintenance expenses, they would not have been so much.

Q. To what, in your judgment, should that have been
1577 charged?

A. I think the large increase is due to the fact that all the larger railroads in the country, or nearly all the larger railroads in the country, have materially improved their way and structures,

and their equipment, at the expense of operating, during the past ten years.

Q. And have charged it to operating expenses instead of to capital?

A. I think that their property has been greatly improved through charges made to operating expenses.

Mr. HAGERMAN:

Q. These figures are too little, in this Exhibit 20, for the increase?

A. No, sir.

Q. I don't understand whether you are referring now to the increase in the charges for maintenance, as shown in Exhibit 20, or on the Burlington statement?

A. To Exhibit 20.

Mr. LADD:

Q. Have you prepared a statement showing the revenue per ton mile in cents, which would be realized by the railroads of the State of Missouri, under the Act of 1905?

A. Yes, sir.

Q. Is this it (handing paper to witness)?

A. Yes, sir.

Mr. LADD: I offer in evidence the paper identified by the witness.

The paper referred to is marked "Defendant's Exhibit 21." Said paper is in the words and figures following to-wit:

1578 The MASTER:

Q. Does this table show each and all of the articles affected by the Act of 1905?

A. Yes, sir.

Mr. LADD:

Q. Mr. Ludlam, take the case of the lowest rate and the longest haul, on any of the commodities affected by the Act of 1905, and how did it compare? Would it be greater or less than the average earnings per ton mile which have been realized by the Missouri Pacific Railroad, according to your statement introduced here on all of its interstate carload business?

A. It would be in excess.

Q. It would be greater?

A. Yes, sir.

Q. How do you make that out? Take the case of hogs: I understand you to say that if you take the lowest rate fixed by this Act of 1905, the railroad would receive a greater revenue per ton mile by conforming to that Act, on the lowest rate mentioned in it than the Missouri Pacific receives per ton mile on its interstate carload business?

A. Yes, sir, than the Missouri Pacific received on the average on all of its interstate carload business. That is to say, the Missouri

Pacific received on the average for all of its interstate carload business .584 of a cent per ton a mile. It is a trifle less than that figure. Whereas, under the lowest rate fixed by the law of 1905 the Company would receive .59 cents per ton per mile. That would be on the 350 mile haul as compared with the average haul of only
1579 109 miles on all the interstate carload freight handled by the Missouri Pacific. And further, this rate of .59 of one cent per ton per mile is based upon hogs in double-decked cars and we are not clear that any railroad would have to furnish a double decked car for hogs under the law. As we interpret the law they would have to furnish only single decked cars for hogs. If they did furnish double-decked cars, although they are not required to do so, as we interpret the law, they would receive .59 cents per ton per mile. And for hauling double-decked cars of hogs anywhere from 100 to 125 miles, which is in excess of the average haul of all the interstate carload business, they would receive a revenue of .76 cents per ton a mile. In case they did not have to furnish double-decked cars for hogs, then the next lowest rate would be .65 cents per ton per mile for a haul of 350 miles, as compared with an average revenue of .58 cents per ton per mile on interstate carload freight.

Judge SPENCER:

Q. How do you reduce that?

A. By the weight of the car.

Q. You reduce a carload of horses, sheep or cattle, to a certain weight?

A. Yes, sir, that is right.

Mr. LADD:

Q. In other words, if I understand you, while the Missouri Pacific hauls its interstate carload freight handled in Missouri an average of only 109 miles, and receives for it an average revenue per ton per mile of .584 cents, the same Company would receive for a carload of hogs, in a double-decked car, if carried under the Act of 1905, 5 and 9/10 mills per ton mile for a 350 mile haul?

1580 A. That is correct.

Q. How much more per ton mile would they receive? What is that fraction?

A. Do you want me to cary out the actual figure?

Q. In round numbers it is .584 cents. Get the exact difference between the revenue per ton mile, which they would receive on those two transactions?

A. It would be .669.

Q. 669 what?

A. One hundred thousandths of a cent per ton per mile.

Q. More?

A. Yes, more.

Q. Under the Act of 1905, than they received on their interstate carload freight?

A. On all interstate carload freight.

Q. And would have a haul of 350 miles for hogs, as against 109 miles, their average interstate haul?

A. Yes, sir, or more than three times as long a haul on the hogs as on their interstate haul on the other.

Q. If the average revenue per ton mile on all interstate carload freight handled in Missouri was .584 cents, would the average revenue on all of what has been called through interstate carload freight in Missouri be less per ton per mile than that?

A. Yes, sir. I have already estimated in my testimony that it would not exceed five mills per ton per mile, and in my judgment the revenue from the through interstate freight would not amount to more than 4 and ½ mills per ton per mile.

1581 Q. That is the average is it?

A. That is the average. That in my opinion is what the average would be.

Q. That in your opinion is the average?

A. That in my opinion is approximately what the average would be?

Q. If your opinion is correct as to the average, it would follow that they would receive less than that amount on some, and more than that amount on others?

A. Yes, sir, but the average would be made up of rates that were higher and rates that were lower than the average.

Q. You say 4 and ½ mills per ton per mile?

A. That is my estimate of what the average revenue would be of all the through interstate freight per ton per mile if the Missouri Pacific interstate carload freight was divided between through interstate and second class interstate freight.

Q. A witness testified in Chicago in this case, I believe it was Mr. Gray, that in his opinion the terminal expenses amounted to 78 cents and a fraction,—we will say 80 cents so as to make it even—per ton at each terminal?

A. Yes, sir.

Q. Making approximately $1.60 per ton for the two terminals?

A. Yes, sir.

Q. Can you tell me what the average revenue from each ton of freight carried by all the railroads in the United States for the year ending June 30, 1904, was?

1582 A. The Interstate Commerce Report shows that the amount received per ton of freight handled by all railroads in the United States, during the year ending June 30, 1904, amounted to $1.07.

Q. A ton?

A. Yes, sir, a ton.

Q. That is the average all over the country?

A. All over the United States.

Q. Suppose there is only one terminal, how much would that leave for all the other railroad expenses, if the expense of one terminal was 80 cents?

A. In profit?

Q. How much would it leave for all other expenses.
A. 27 cents a ton; and the expenses of two terminals, if they amounted to $1.60, would be 53 cents more than they received, on the average, per ton for all the freight handled.

Mr. HAGERMAN:

Q. That is $1,07 for each ton?
A. Yes, sir.
Q. For what length of haul?
A. For all the railroads of the United States.
Q. For what length of haul?
A. I haven't that in mind. I can look that up and see.
Mr. LADD: That is the average revenue for hauling each ton of freight, no matter what the length of the haul is.
Mr. SPENCER: How far?
Mr. LADD: It makes no difference how far the haul is.
Mr. HAGERMAN: It makes no difference whether you haul it 100 feet or 100 miles?
1583 Mr. LADD: That is the average on all hauls.
The MASTER: That they have gained only $1.07 on the average on each ton of freight handled?
Mr. SPENCER: That is after taking the expenses out, isn't it?
A. No, sir, that is the gross amount of revenue received by all railroads of the United States for all freight handled by all the railroads in the United States an average of $1.07 per ton.
Q. Would that be the same as an average of 5 cents a hundred on freight?
A. No, sir, it is a different figure.
Q. 2000 pounds isn't it?
A. Yes, sir.
Q. It is practically the same figure?
A. Yes, sir.
Q. On all of the business?
A. All of the business handled by all of the railroads of the United States during the year 1904.
Q. From where do you get those figures?
A. The statistical report of the Interstate Commerce Commission.
Q. Wnat page?
A. Page 99.
Q. For what year?
A. June 30, 1904.
Q. Would that mean five cents per hundred on freight from New York to San Francisco?
1584 A. The average, Judge Spencer.

Mr. LADD: I wish you would cross examine the witness when I get through. I don't wish to be captious but I don't like you to break in this way.
Mr. SPENCER: I beg your pardon but I thought it would be better for us to understand this as we went along.

Mr. LADD: As Judge Spencer has suggested, that is in round numbers an average of five cents a hundred?

A. Yes, sir.

Q. Mr. Gray put his terminal expenses for one terminal at about four cents a hundred, I think he fixed it?

A. Yes, sir, as I recall the testimony.

Q. If he were right that would leave only one cent a hundred for all the other expenses of the railroad company?

A. Yes, sir, and for the other terminal.

Q. That is, in the case where there is only one terminal it is only four cents a hundred?

A. Yes, sir.

Q. Where there are two terminals, according to him, it is eight cents per hundred?

A. Yes, sir.

Q. Mr. Ludlam, in your judgment are the average terminal expenses for one terminal eighty cents a ton, or anything like it?

A. No, sir. In my judgment they are not one-tenth of eighty cents on the average.

Q. If they were eighty cents a ton on the average, could any railroad in the country carry on business? Could it meet its

1585 other expenses possibly?

A. Why, of course not.

Q. If they had only $1.07?

A. If his terminal expenses were $1.67 a ton——

Q. Suppose it was 80 cents for just one terminal, could they meet their other expenses out of the $1.07?

A. No, sir. Their total expenses have not amounted to 80 cents if their total revenue is only $1.07, because the proportion of freight expenses to freight earnings has not been anything like 75 to 80 per cent.

Q. What per cent of $1.07 is 80 cents?

A. Roughly, 75 per cent.

Q. What is the total operating expense, the ratio of it to earnings, of the country through? What per cent?

A. If I may look at this book I can tell you. The total operating expenses of all the railroads in the United States, during the year ending June 30, 1904, amounted to 67.79 per cent of the operating income; and in group 6 the ratio of operating expense to earnings for the same year was 65.90 per cent.

Q. On what page is that?

A. Page 97.

Q. Of that same volume of the Statistical Report of the Interstate Commerce Commission?

A. Yes, sir.

Q. That is the total operating expense; that is not freight?

A. Total operating to total earnings?

Q. Does that show what the freight expenses were?

1586 A. No, sir.

Q. What is the percentage of 80 to $1.07?

A. 75 per cent.

Q. 80 cents is a larger percentage of $1.07 than the total operating expenses of all the railroads in the country, is it?

A. Yes, sir. 80 cents is a larger per cent of $1.07, than the average of the operating expenses of all the railroads in the United States to the earnings of all the railroads in the United States.

Q. And you have already said that in your opinion the percentage of operating expenses to earnings in the passenger business is larger than in the freight business?

A. Yes, sir.

Q. And it is generally so understood.

A. Yes, sir. And, therefore, the ratio of freight expenses to freight earnings would be less than the average ratio of all expenses to all earnings.

Q. Would you be willing to give any estimate or would you make any estimate, as to what terminal expenses on the average do amount to per ton?

A. We have not prepared any detailed figures on that, but I should say, roughly, they would not amount to over 8 or 9 cents per ton at each terminal.

Q. Considering all freight handled?

A. Yes, sir, considering all freight handled.

Q. What percentage would that be of the gross revenue that is $1.07?

A. 8 cents a ton would be 7 and ½ per cent of the revenue
1587 of $1.07 per ton; or, for the two terminals 15 per cent.

Q. Mr. Sturgis testified that in determining the proportion of interstate freight business of the Company, which should be credited to the Missouri part of the system, the gross earnings on that business were divided on a mileage basis: Do you think, for the purpose of such litigation as this that is fair to the Missouri part of the system?

A. No, sir. Where there is a difference between rates, in the different States through which the road operates, it is not fair in determining the earnings of any one State, to divide the earnings on a mileage basis. They should be divided on a pro rate by rate basis. And if one road operated in one State where we will say the rate was 40 cents for 50 miles and another road operated in another State, connecting with it, where the rate was 60 for 50 miles, those two roads in dividing their earnings between themselves, would not divide the through rate on a mileage basis. I am speaking generally now.

Q. Would one get 40 cents and the other 60?

A. Roughly, yes. Of course, there might be some variation but there wouldn't be much.

Q. You believe that would be the method of division?

A. Pro rate by rate is the method of division between railroad companies, and, as I see it, should be the method for purposes of this case.

Q. Where the rates vary in the different States?

A. Yes, sir, where they are higher or lower the division should be made on a pro rate by rate basis.

1588 Q. Why do you say the other method operates unfairly to the State of Missouri in this case?

A. Because the local rates in Missouri are higher than the rates in either Iowa or Illinois.

Q. Have you prepared a statement showing what the local rates on the Burlington road for a certain distance are, and what sums will be allowed Missouri out of the through rates, from various points outside of the State, on freight carried to the points mentioned in this Statement, within the State?

A. Yes, sir. (Witness produces paper.)

Mr. LADD: I offer in evidence the statement produced by the witness.

The paper referred to is marked "Defendant's Exhibit 22".

Said paper is in the words and figures following, to-wit:

1589 Q. I see in the first column of this statement, there are towns situated in the central part of the State, some on the extreme borders, for instance Kansas City; some perhaps up near the Northern line of the State, such as Unionville and Gainesville; and Cameron I also notice on it.

Now, under the head of "Chicago" the first figure there is 19.1 per cent opposite Monroe: What does that mean?

A. That means that if the through rate from Chicago to Monroe is divided on a mileage basis, Missouri will be divided with 19.1 per cent of the local rate for a haul of the same distance in the State of Missouri.

Q. That is to say, on a shipment from Chicago to Monroe, this apportionment of Missouri's part of the earnings, which has been adopted here, only gives to the Missouri part of the system 19.1 per cent of what the Company would have earned if it had hauled that same freight from Hannibal to Monroe, is that it?

A. Yes, sir.

Mr. HAGERMAN: I don't understand what you mean by that. That shipment would come from Chicago through Quincy.

Mr. LADD: It comes through Hannibal.

Mr. SPENCER: No, sir, it does not.

The MASTER: It is the same distance from Monroe to Hannibal as it is from Monroe to Quincy.

Mr. SPENCER: Is it 19.1 per cent of the rate from the river to Monroe?

A. I mean the amount that would be apportioned to the State of Missouri on the through rate from Chicago to Monroe would be only 19.1 per cent of what the State would get for hauling
1590 the freight from the river to Monroe?

Mr. HAGERMAN:

Q. Under the local rate?

A. Yes, sir.

Q. 19.1 per cent of the local rate?

A. Yes, sir.

Mr. LADD:

Q. The State line?

A. The division of the rate from the State line would amount to only 19.1 per cent of the local rate from the State line.

Q. Take from Chicago to Macon: Does that mean that on a shipment from Chicago to Macon only 34 per cent has been allowed to Missouri in this statement, 34 per cent of the amount which the Company would earn if it had hauled that freight from the State line to Macon, has been allotted to the Missouri part of the earnings?

A. Yes, sir.

Q. That is to say, the Burlington Company says to a merchant in Macon, if you will go to Chicago and buy your goods and ship by the Burlington road, we will charge you $34.00 for hauling these goods from Hannibal to Macon when from Chicago; but if you go to Hannibal and buy them we will charge you $100.00 for hauling them from Hannibal to Macon: Is that an illustration?

A. That is an illustration.

Q. It is explained in a note at the bottom of this statement how you arrive at these figures. I see it is confined to certain classes.

A. Yes, sir. It says "The above percentages were arrived at
1591 by taking the sum of Missouri's proportion figured on a mileage basis on all the rates from the first class to class E.

Q. And how many classes does that include?

A. That would be Classes 1, 2, 3, 4 and 5, and A., B., C, D and E. That would be ten classes. And the sum of the Missouri Railroad Commissioner's Rates from the first class to class E inclusive, from the State line.

Q. You add up the Commissioner's rates on all those classes?

A. Yes, sir.

Q. And then you compare that with the sum of the proportion of the through rates allowed to Missouri by this statement on all those classes: Is that it?

A. Yes, sir. We obtained the average in both cases.

Q. You think that is not fair to Missouri?

A. No, sir.

Q. Mr. Ludlam, according to the statement which you put in here this afternoon, the average revenue received per ton mile by the Missouri Pacific Railroad Company on all its State business, so far as you have had opportunity to examine it, was 1.54425 cents and on all the interstate business .63456 cents: On the assumption that the State business costs three times as much in proportion to revenue as all of the interstate business, how many times as much per ton per mile would the State business cost as the interstate?

A. 7½ times.

Q. Now take that same basis again and assume, as has been testified to here by some people, that the State business costs seven times as much in proportion to revenue as the interstate busi-
1592 ness, how many times per ton per mile would the State business cost as compared with the interstate?

A. 17 times.

Q. Mr. Stuart of the Erie Railroad testified that the average weight of all carload freight on his line for a given period was 32 tons, and that the average loading of way cars was 4 tons: Suppose the revenue per ton mile on the carload business has been .584 cents (that is your Missouri business figure) how much would the earnings have been per mile on his 32 tons?

A. 18.688 cents.

Q. 18 and a fraction cents?

A. Yes, sir.

Q. Suppose the revenue per ton mile was 4½ mills (I believe that is your estimate of the through interstate business) how much would the earnings be per mile on 32 tons?

A. 14.4 cents.

Q. Suppose the revenue per ton mile on the State less than carload business had been 4.521 cents, how much per mile would have been earned on the 4 tons?

A. 18.084 cents.

Q. How much more would they have got under those circumstances for carrying 32 tons a mile than they got for carrying 4 tons a mile?

A. If they got 58/100 and a fraction cents per ton per mile, they would receive for carrying the 32 tons one mile 6/10 of a cent more than they would receive for carrying the 4 tons 1 mile. But if they got 4½ mills per ton per mile, they would receive about 3½
1593 cents less for hauling the 32 tons than for hauling the 4 tons 1 mile?

Q. Did you make an examination in reference to certain aspects of the business covering the 1st, 2nd and 3rd days of October, 1905, in examining the Missouri Pacific record and way-bills?

A. Yes, sir, we made an examination of all the way-bills made on October 1st, 2nd and 3rd, 1905.

Q. I suppose you mean of all the records and way-bills which in any way affected Missouri?

A. Yes, sir.

Q. Freight which is handled in Missouri, went through Missouri, or originated or ended in Missouri: That is what you mean?

A. Yes, sir.

Q. Only such freight as went on some part of the Missouri portion of the Missouri Pacific system?

A. Yes, sir, only such freight as touched Missouri.

Q. You took all that?

A. Yes, sir, whether it originated on the Missouri Pacific or connecting lines.

Q. All the freight of every description that got on to the line of the Missouri Pacific in Missouri in those three days: Is that it?

A. Every pound of freight that was billed those three days that would reach the Missouri Pacific.

Q. That would get into Missouri, either going through, starting from, or stopping in Missouri?

A. Yes, sir.

1594 Q. How many ton miles of that was through interstate freight going right through the State?
A. 1,368,754 ton miles and a fraction.

Mr. HAGERMAN:

Q. That is through interstate?
A. Yes, sir.
Mr. SPENCER: Did you have the destination of all that?
A. Yes, sir.

Mr. LADD:

Q. What percentage was that of the entire body of freight of all kinds?
A. 37.021 per cent.
Q. How many ton miles of second class interstate freight?
A. 1,763,755 and a fraction ton miles.
Q. What percentage was that of the total ton miles?
A. 48.056 per cent.
Q. How many ton miles of State freight?
A. 547,726 and a fraction ton miles.
Q. What percentage was that of the whole?
A. 14.923 per cent.
Q. What per cent of the whole was the total interstate including both through and local?
A. 85.077 per cent.
Q. How much was the total interstate freight?
A. 3,122,509 ton miles.
Q. What is the total of interstate and all State freight?
A. 3,670,235 ton miles of freight handled in carload lots.
1595 Q. Is that carload freight, or does it include less than carload?
A. That is carload freight only.
Q. It does not include any freight except carload?
A. It includes no freight except carload. All less than carload is omitted.

Mr. HAGERMAN:

Q. In all this tabulation?
A. No, sir, in those figures I have been testifying to as to those three days.

Mr. LADD: I will ask Mr. Ludlam to put that in the form of a tabulated statement and I will offer it in evidence later.

Q. Mr. Ludlam, I wish you would take as correct, for the purpose of this question and your calculations on it, the statement on page 1, of Complainant's Exhibit 1, that the local freight earnings for the year 1904 in Missouri were $1,525,158.92; and in 1905 $1,649,665.73; assume that those items of revenue were produced by carload and less than carload freight in the same proportion as you found relative to the Missouri Pacific in your examination and that the revenue per ton mile was the same?

A. On the two classes?

Q. Yes. And assume that the proportion of operating expenses to earnings on interstate carload freight are relatively 50 per cent and 60 per cent; and show upon those assumptions, incorporating these figures I have mentioned, whether there would have been a profit or a loss upon the local freight business of the Burlington Company for those two years; Can you do that?

A. Yes, sir.

1596 Q. Will you have that here in the morning?

A. Yes, sir.

The usual hour for adjournment having arrived the further hearing of testimony was adjourned to tomorrow, Thursday, November 15th, at 10 o'clock a. m.

KANSAS CITY, MISSOURI, *Thursday, Nov.* 15, 06.

Met pursuant to adjournment as above, on Thursday, November 15th, 1906, at 10 o'clock a. m.

Present: Mr. F. L. Schofield, Special Master.

Mr. O. M. Spencer appeared in behalf of the Burlington Railway Company.

Messrs. John Kennish and S. B. Ladd appeared in behalf of the State of Missouri.

The following proceedings were had:

The examination of CHARLES S. LUDLAM, resumed as follows:

Mr. SPENCER: I should like to ask Mr. Ludlam about a statement, so I may understand it.

You thought the 80 cents on the terminal, if multiplied by two, would be $1.60, and that would absorb this whole $1.07 on the ton?

A. Yes, sir.

Q. I have not been able to understand whether you mean that there is a charge of 80 cents on every one of the tons referred to in this report of the Interstate Commerce Commission, that you

1597 say earns $1.07: Do you mean to say there is 80 cents terminal charge, under our testimony, on every one of those tons?

A. Yes, sir, I mean to say that the total revenue is $1.07, and if the total revenue is $1.07, there could not be two terminal expenses of 80 cents each paid out of that $1.07.

Q. It would absorb the whole thing?

A. More than that.

Q. Take a safe, weighing a ton, and start it from St. Louis to St. Joe, for instance—just to get your meaning. In loading that safe at St. Louis we say it costs 80 cents?

A. Yes, sir.

Q. And when it gets to St. Joe and is unloaded it costs 80 cents?

A. Yes, sir.

Q. That is one ton moves 300 miles?

A. Yes, sir.

Q. And under this Report of the Commissioners that would be 300

tons moved 1 mile, wouldn't it? That is the way that is figured, 300 tons moved one mile?

A. No, sir, those are not the earnings per ton per mile.

Q. The newspaper this morning stated that your testimony was $1.07 per ton per mile, and that is what I wanted to get straight.

A. That is a mistake. It is $1.07 per ton.

1598 DALE HARMAN, a witness of lawful age, being duly produced, sworn and examined, on behalf of the Defendant, testified as follows, to-wit:

Direct examination.

By Mr. JOHN KENNISH:

Q. What is your name?

A. Dale Harman.

Q. You reside where?

A. Kansas City.

Q. What is your business?

A. Freight agent for the C. B. & Q.

Q. You may state what your duties are as local freight agent, with reference to the making up of freight trains that pass over this division?

A. I give instructions to the yardmaster as to what cars are to go in the freight trains, as I get the billing from the shippers.

Q. Do you keep any record of the origin and destination of the cars of freight that go to make up the trains that are made up on this division?

A. Yes sir, we have a shipping ticket, or dray ticket, as furnished us by the shippers, that shows that information.

Q. What would those tickets show as to the origin and destination of cars of freight that go into the trains made up here?

1599 A. It is a printed form of bill of lading, such as is commonly used, and it is generally dated wherever the shipment is made from, and the date, and shows the consignor and consignee, and the commodity in the shipment.

Q. And there is such a record as to every car that goes into the train, is there?

A. Well, we have what we call an "out-train sheet," and we make a record of car numbers. We use numbers for the destination. The stations are numbered, and the junction points are numbered, and we simply use the numbers on the out-bound train record.

Q. Have you any book on which you keep a record showing these facts?

A. Only as they are kept in bundles, each day's tickets in a bundle.

Q. You have those tickets for the month of October, 1906, in your custody, have you?

A. Yes sir.

Q. About how many way-bills or tickets showing these facts would there be as to the month of October of this year?

A. About 50,000. They run about 1,800 a day; 1,500 to 1,800

a day. For the month of October I could not give you the exact figure without my records.

Q. You think about 50,000 for the month?

A. Yes sir. There are twenty-six working days, and they run 1,500 to 1,800 a day.

Q. I understand, Mr. Harman, that all freight that passes through this division is covered by these records that you speak of?

1600 A. Of course, the through shipments, we will say billed from some point north or west, we do not have the original ticket on that. We take a record of the passing billing, "Passing Report," we call it.

Q. Your record would show that?

A. The original record is filed in the Auditor's Office in Chicago.

Q. Have you a record of that in your office?

A. I believe we have an impression copy of that, but I couldn't say positively.

Mr. KENNISH: Will it be all right for us to see those tickets or way-bills, Judge Spencer?

Mr. SPENCER: Yes sir.

1601 A. P. TALIAFERRO, a witness of lawful age, being duly produced, sworn and examined on the part of the defendant, testified as follows:

Direct examination.

By Mr. S. B. LADD:

Q. Give your name.

A. A. P. Taliaferro.

Q. Where do you reside?

A. New York City.

Q. With what firm are you connected and have been for some time?

A. Haskins & Sells, Certified Public Accountants.

Q. For the last few months where have you been temporarily located?

A. Since June 18, 1906, I have been almost wholly in the city of St. Louis, except when I was attending the hearings in this case.

Q. Are you the one who has had immediate charge of the examination of the books and papers of the Wabash Railroad and the Missouri Pacific Railway Companies, on behalf of the State of Missouri, in this litigation?

A. Yes, sir.

Q. You were assigned to that special duty by your employers?

A. Yes, sir.

Q. You may give your experience in railroad and accounting work, such as it has been.

A. I spent five years in the Motive Power Department,

1602 beginning as messenger boy and ending as Acting Chief Clerk to the Superintendent of Motive Power.

Q. With what Company?

A. The Norfolk and Western Railway.
Q. Then what?
A. Then I had five years more altogether with the Norfolk & Western in the Traffic Department, part of the time as Secretary to the Vice-President, and the greater part of the time as Rate Clerk.
Q. During that experience, was it part of your duty to attend your employer, the Vice-President, at meetings of Presidents and Traffic Managers?
A. Yes sir, I went to a great many such meetings.
Q. All over the country?
A. Yes sir.
Q. How many meetings of Traffic Managers have you attended in that way, and listened to their discussions?
A. Possibly fifty.
Q. Then where did you go?
A. Then I went to the Chesapeake & Western Railroad, in Northern Virginia.
Q. Part of this time when you were Secretary and Chief Clerk, was your principal connected with the Reading Road?
A. Yes sir. I had about five years altogether in the Traffic Department of the Norfolk & Western, and an additional year with the Philadelphia and Reading Road.
Q. In the Traffic Department?
A. Yes sir.
Then I went to the Chesapeake & Western, as general util-
1603 ity man, and did everything for about a year and a half and then I was made Superintendent of the road, and held that position about three years. During that time I was engaged off and on on work of Haskins & Sells, as Mr. Sells was the President of the road.
Q. That was not a long road?
A. Only 27 miles.
Q. That was in Virginia?
A. Yes, sir.
Q. And after that?
A. I went to southwest Virginia with two little roads that were built to develop some properties.
Q. In what capacity?
A. General Superintendent.
Q. What were the names of those roads?
A. The Virginia, Carolina and Beaver Dam Roads.
Q. That was a short road too, wasn't it? How long was it?
A. Including their logging road, they had about 30 odd miles.
Q. What did you do after that, either in railroading or accounting?
A. At the suggestion of Mr. Haskins, of Haskins & Sells, I went back to New York, to take charge of the accounts of the Houston Oil Company of Texas, and stayed in New York about 8 months. Then I went to Texas, as Auditor and Treasurer of the Houston Oil Company, and its subsidiary Companies, and stayed there nearly

three years. About a year ago I went back to Haskins & Sells.

1604 Q. And have been with them ever since?

A. Yes, sir.

Q. Before that time, I will ask you whether for Haskins & Sells you had anything to do with the auditing of accounts for railroad companies?

A. Yes, sir.

Q. On special employment?

A. Yes, sir.

Q. What?

A. I was engaged on a number of pieces of work for them during the time I was connected with the Chesapeake & Western.

Q. You say you have been in St. Louis since June last, and have been at work there pretty continuously, have you?

A. Yes, sir.

Q. How many men have you had in your employment there on this work?

A. I should say it averaged 4 or 5. We have had as many as 8 and started out with 1 or 2.

Q. Your whole time has been given up to this special work since you have been in St. Louis?

A. To this Maximum Rate Matter, since the middle of June.

Q. And these four or five men you speak of?

A. Yes, sir.

Q. During that time you have consulted with and had the advice of Mr. Ludlum? Has he been there off and on considerable of the time?

A. Yes, sir.

1605 Q. There were a number of statements offered here in evidence yesterday, in connection with Mr. Ludlam's testimony. Did you assist in the preparation of those statements?

A. Yes, sir.

Q. And you think they are correct, do you?

A. I do.

Q. Do you agree with Mr. Ludlam in the conclusions of those statements as shown therein?

A. I do. Yes, sir.

Q. You have already stated that you have been engaged for some time in examining the Wabash books and way-bills?

A. Yes, sir, that included some of the way-bills; quite a number of them.

Q. I will ask you whether, speaking particularly and generally, the State tariff mileage rates are the same for the same service, upon the Wabash as upon the Burlington road?

A. It is my understanding that the maximum rates promulgated by the Commissioners have been adopted by all the railroads as their distance rates in Missouri. Of course, they make lower rates in certain cases.

Q. Did you make an examination of the books and way-bills of the Wabash railroad, and of their business during the month of

October, 1905, so as to cover all the shipments forwarded from certain points on the Wabash Railroad during that period?

A. Yes, sir.

Q. Now was that examination confined to the shipments of purely State freight from those points?

A. Yes, sir.

1606 Q. Did it cover all the State shipments from those points during that period?

A. Yes, sir.

Q. How many stations did you take?

A. Twenty-seven.

The MASTER:

Q. All shipments of purely local or State freight, to and from 27 stations?

Mr. LADD: Just from.

The MASTER: From 27 stations of the Wabash Railroad for the month of October, 1905?

A. Yes, sir.

Mr. LADD: Did you take all the stations between two certain points on that road?

A. I took the western part of the road between Moberly and Kansas City; not every station, but a group of stations, representing what we thought was good average territory.

Q. The first station in the list I have here, which you prepared, is Carrollton?

A. Yes, sir.

Q. You do not seem to have them here in the order in which they come on the road, I think, because Norborne is west of Carrollton: Is that right?

A. I am not positive about that. We didn't make any effort to keep them in station order.

Q. You took 27 stations, not including Kansas City and Moberly, but all those stations were between those two points?

A. Yes, sir. There may have been some on the line to Omaha going up from Brunswick, but they were all in the State of Missouri.

1607 Q. Was there any effort to pick out any particular station for any particular purpose?

A. No, sir, not at all. I see Excelsior Springs on this list; that is on a branch.

Q. You obtained the actual earnings received by the Company for freight forwarded from each one of those stations, during that period, did you?

A. To other points in the State, yes, sir.

Q. What was the total of those actual earnings received by the Company for freight forwarded from all those 27 points during that period?

A. $10,388.76.

Q. Did you take the way-bills and make the calculation? You

have prepared a statement of all this, which I am going to offer in evidence, did you?

A. Yes, sir.

Q. The first column, under the heading of "Actual Earnings", shows a footing of the figures you have just mentioned $10,388.76: That is what they received, is it?

A. Yes, sir.

Q. In another column is what purports to be what they might have received under certain circumstances for the same amount of freight?

A. Yes, sir.

Q. Now, if the railroad had charged for the transportation of that freight, the rates allowed by the Act of 1905, so far as they applied to the freight, and on other merchandise the rates allowed by
1608 the Board of Railroad and Warehouse Commissioners' schedules, what would have been their receipts?

A. $11,189.52.

Q. What is the difference?

A. About $800.00.

Q. I see you have this statement headed "Earnings under Missouri Statute Rates." You mean by that the Statute and Commissioners' rates?

A. That is what we meant.

Q. I will change that so it will read "Earnings under Missouri Statute and Commissioners' Rates."

Mr. SPENCER: You have combined those under the Act of 1905 and the Commissioners' rates.

The MASTER: In a word, if they had charged the highest rate, which they might have charged legally under the Act of 1905, if in force, and the other laws of the State, it would have been so much?

Mr. LADD: Yes, sir.

Q. What percentage of increase would that be?

A. About 8 per cent.

Mr. LADD: I offer in evidence the paper identified by the witness.

The paper referred to is marked "Defendant's Exhibit 23."

Said paper is in the words and figures following, to-wit:

1609 Q. Suppose the same conditions prevailed on the Burlington System and suppose that it is a fair average, that percentage of 8 per cent, for the whole year, and on all the State freight, shipped or received, at all the stations in Missouri; and suppose it would be regarded as a fair average assume it to be a fair average as applied to purely State shipments to and from all stations on the Burlington road in the State of Missouri; and that the actual receipts by the Burlington, during the year 1904, from State freight, were $1,525,158.92, how much more than that would the Burlington have received if they had charged up to the statute and Commissioners' rates in that year?

A. Approximately $122,000 more.

Q. More than they did receive?

A. Yes, sir.

Q. I understand you mean by that, that the claimed loss of $173,000, which the Burlington people claim they would have sustained, would not have been sustained, and $122,000 more than they actually received would have been derived?

A. Yes, sir.

Q. I don't suppose you know whether the conditions were exactly the same or substantially the same on the Burlington or not?

A. No sir, I don't know anything about that.

The MASTER: As I understand it, your question embraces more than the testimony of the witness would justify even as an hypothesis in this: That in his investigation for the month of October he
1610 includes only the freight shipped from those stations, but your question supposes and includes freight shipped to and from those stations.

Mr. LADD: It assumes, if your Honor pleases, that this is the average. It does not settle it that it is the average, but he simply takes those stations.

Mr. SPENCER: There would have been an increase of eight per cent on the outgoing stuff?

Mr. LADD: Yes.

Mr. SPENCER: You have included the incoming freight to those stations as well as the outgoing freight, in your application of the eight per cent to the Burlington earnings?

Mr. LADD: Precisely.

The MASTER: He is assuming that the same conditions would obtain for the incoming as for the outgoing freight?

Mr. LADD: Exactly. But we did not have time to go over that part of it.

Q. All the State freight, is, of course, forwarded from some station in the State?

A. Yes, sir.

Q. Did you figure on 1905?

A. I did not.

Q. You reach these figures of $122,000 in round numbers, by taking eight per cent of the total local earnings as shown by the Burlington statement, didn't you?

A. Yes, sir.

Q. And you would reach the results for 1905 by pursuing the same method?

1611 A. Yes, sir.

Q. Have you made any examination as to the part of the interstate live stock rates from Kansas City to East St. Louis and Chicago, which would be credited to the Missouri part of the system, as compared with the rates which the companies would receive for the same haul, over the same track, in the State, under the Act of 1905?

A. Yes, sir.

Q. What is the result? Give some illustrations?

A. I am not sure whether you said from Kansas City proper, or not. The figures I have are based upon the proportional rates from Kansas City.

In our examination of the Wabash we found that all stock was billed for Kansas City at these proportional rates. I presume none originates there.

The MASTER:

Q. You are speaking now of the Wabash?
A. No, sir, I am speaking now of the Burlington.
Q. You mentioned the Wabash?
A. I mentioned it in connection with the fact that all stock seemed to come from beyond Kansas City; and, therefore, the rates that would apply would be lower rates than from Kansas City proper. There was not any stock that was considered as having come from beyond, and these charges per car are based on these proportional rates.

Mr. SPENCER:

Q. Between Kansas City and Chicago?
A. From Kansas City to Chicago, and from Kansas City to St. Louis.
1612 Q. It does not pertain to any rate into Kansas City?
A. No, sir.
Mr. LADD: Proceed.
A. Out of the rate on a 36 foot car loaded with cattle, going to Chicago, we found that on a mileage basis Missouri would be credited with $17.82. That is, after deducting the Mississippi River bridge toll of five dollars.
Q. That is on the rate actually charged from Kansas City to Chicago for the transportation of live stock?
A. Yes, sir, a few months ago, if they have not been changed.
Q. The Missouri part of the system would be credited with that part of the rates actually charged: is that right?
A. Yes, sir.
Q. How much is that?
A. $17.82 out of $39.00, the through rate being $44.00, and the bridge toll of $5.00 having been deducted.
Now, I understand from Mr. Fisher's testimony that the bridge tolls were added back to the revenue credited to the States on each side of the river. If that is so, Missouri would be entitled to almost $2.50 of that $5.00 previously deducted, making the total credit to Missouri $20.32.
Q. On an interstate shipment?
A. Yes, sir.
Q. The rate from Kansas City for that distance in the State would be $25.30.
Q. Under the Act of 1905?
A. Yes, sir.
1613 Q. How much more than the inter-state?
A. $4.98.

Mr. SPENCER:

Q. What was the total rate on this shipment, from Kansas City to Chicago?

A. $44.00 for the car, based on a twenty-cent rate on 22,000 pounds.

Mr. LADD:

Q. Have you any illustration about East St. Louis? I mean, on stock shipped from Kansas City to East St. Louis?

A. The rate would be $29.70 for the same car, and the Company would allow a bridge toll of $4.00, leaving a net revenue to Missouri of $25.70.

Q. And under the Act of 1905, what would the rate be?

A. The rate would have been $29.70.

Q. What is the difference?

A. $4.00.

Q. In whose favor?

A. In favor of the new statute rate.

Q. Under the Act of 1905, as I understand it, they would have received $4.00 more than the Missouri part of the earnings, on an interstate shipment to East St. Louis, under the rates which they actually charge?

A. Yes, sir.

Q. Hauling it over the same road, and for the same distance?

A. Yes, sir. I might add this: that we found, on all the stock leaving Kansas City by the Wabash, that a switching charge and a cleaning charge was allowed, which, as I remember now, aggregated about $3.50 a car.

1614 Q. On what?

A. Live Stock.

Q. What kind of a shipment?

A. That applies to all stock.

The MASTER:

Q. What road are you talking about now, the figures you have just given?

A. The figures apply to the Burlington.

Mr. SPENCER:

Q. I just want to know if he arrives at this $25.00 under the Act of 1905, on a basis of mileage, or the weight of the car.

A. That is 110 per cent, Judge Spencer, of the rate for 225 miles.

Q. That law provides for the distance tariff, $6.00 for the first 25 miles, per car, and increasing right on?

A. Yes, sir.

Q. Did you use that computation in arriving at the $25?

A. Yes, sir.

Q. You took the distance from Kansas City to St. Louis?

A. Yes, sir; that is by the short line.

Q. The Wabash?

A. And the Burlington, too. 225 miles to Hannibal, which is the point where it would leave the State, going to Chicago.

Q. I was talking about a St. Louis shipment.

A. That is 280 miles by the Burlington.

Q. You mean that Illinois gets less than its local rate?
A. I think so, yes, sir.

Mr. LADD:

Q. Now, Mr. Taliaferro, if the expenses of the local freight
1615 traffic are apportioned to Missouri on the basis of the ratio of the local earnings to the total freight earnings, what do you say about the fairness of apportioning to Missouri its share of interstate earnings, on the respective mileage in Missouri and the adjoining State over which the freight passes?

A. I think if the rates in Missouri are higher than the rates in the adjoining States, that is, if the average is higher, it is not fair to use a mileage basis in dividing the interstate rates. I think they should be divided—of course, not in every case, on each particular shipment—on the basis of locals, or what I have heard termed "a prorate by rate basis." But I thing some fair percentage should be worked out for dividing the interstate rates, and in this case that method would allow Missouri more than it has received on the interstate business. That is, if the volume of traffic to and from the states that have lower rates than Missouri is considerably in excess, as I think it must be, of the volume of traffic interchanged with states that have possibly higher rates than Missouri.

Q. If I understand you, it is this: These figures on the first page of Exhibit 1, of Complainant, $1,525,158.92 for local earnings in the State, are the result, if I understand the testimony here, of higher rates on the average in Missouri than, say, in Illinois: is that true?

A. Yes, sir, on all of the classes, and possibly not so high on some of the commodities.

Q. Now, the expense of doing the traffic has been appor-
1616 tioned according to the ratio of the earnings of the local traffic to the total earnings, or to the total earnings of the freight traffic.

Now, if the figures showing the receipts from local traffic are based on the high rates in Missouri, and the expenses are divided on that basis, isn't it fair, in your opinion, that when they come to apportion them, if they do it in that way—when they come to apportion to Missouri its portion of the interstate rates, that apportionment should be based also on the high local rates in Missouri?

A. I think the division of earnings on interstate business should be based, as nearly as possible, on the relation of Missouri's local rates to the local rates in other states.

Q. If they pursue one method in apportioning the expenses isn't it right they should pursue the same method in apportioning the earnings: Isn't that so?

A. Yes, sir, I should say the same method should be used.

Q. Substantially the same method?

A. I think so.

May I add a word to that? I do not want to anticipate your question, but this is the idea, as I understand from the testimony which has been given here:

The expenses in Missouri are fixed. There is no trouble in apportioning to Missouri its share of the total expenses. And those expenses are divided between the freight and passenger business.

Now, the freight expenses are further divided between State and interstate business, in the relation of the earnings
1617 on each class to the total earnings. If the earnings on the interstate business are lower by reason of a division on a mileage basis than they should be—I mean for the purpose of a case of this kind—then the State traffic is burdened with a larger share of the freight expenses in Missouri than it would otherwise be.

Q. From your observation and experience, and from your examination of the accounts of these railroad companies, and from the information which you have obtained in various ways during your examination into these accounts, is it your opinion that the State carload business costs, on an average per ton mile, twice as much as the second class of interstate carload business?

A. I do not.

Q. Well, now, why?

A. To begin with, of course a ton mile is one ton one mile; it matters not what kind of freight is being hauled. And, on account of the location of the commercial cities of Missouri, the fact that they are all located on the east and west borders, my idea is that the average haul on the second class of interstate freight must be very close to the average haul of State business: Because the people in the interior of the State of Missouri must trade with the cities on the east and west borders. I think that eliminates, to a great extent, the question of the length of haul, as between State business and second class interstate business.

Then, it seems to me, that if all second class interstate busi-
1618 ness has to use one terminal in the State, just as fully as State business does, and it has to be hauled on the average just as far as the State shipment is hauled, the additional cost of the second class interstate carload business must consist in the difference in the cost at the second terminal, the State shipment getting the full use of two terminals, and the second class of interstate getting the full use of only one terminal, the road haul, and some small use of a terminal in getting into or out of the State at the border. That is the only additional expense connected with that class of business.

Q. You are speaking now of carload business?

A. Yes, sir.

Q. I want to call your attention to what is called sometimes, I believe, in the testimony here, "interline freight" and "interline purely State freight": By that I mean carload freight which may originate in this State on the line of one railroad, and in the course of its transportation to its ultimate destination to another point in this State, it reaches another line of railroad, and is carried over it: What do you say about the terminals as to such a class of State carload freight? Are there two terminals there for each road?

A. I don't think so.

Q. Why?

A. The shipment is either not loaded or not unloaded on a par-

ticular line. It is transferred to some other line en route. And in the sense I understand the word "terminal" to be used here, it would not use two terminals on one line.

1619 Q. So, although it is a purely State shipment, passing over the lines of two different railroads in this State, there is only one terminal on each line of railroad: is that it?

A. In the sense I understand *and* the word "terminal" to have been — here, yes.

Q. That is for the reason that a car does not break bulk, but goes right along: isn't it?

A. Yes sir.

Q. Would that kind of a shipment, so far as the question of terminal charge is concerned, be upon the same basis as an interstate shipment, carload lot, which is transferred on the border of the State, from one road to another?

A. Yes sir, except this occurs to me; that it might be interchanged at some point in the State, where the work might be done for practically nothing. The car may be set on a connecting or interchange track, and the other road would take it off. Whereas, any car that passes through those large terminals in getting into or out of the State, is handled at considerably more expense, necessarily.

Q. Based upon your same knowledge and information, I will ask you whether, in your opinion, it costs any more to handle State less than carload freight than interstate less than carload freight, per ton mile?

A. I think it costs less to handle interstate less than carload freight.

Q. It costs less to handle interstate less than carload freight?

A. Yes.

1620 Q. Than it does to handle the State less than carload freight?

A. Yes sir.

Q. Why? What is the difference?

A. The idea I have in my mind is, that it is not practicable to load less than carload freight for a long haul. It has to be handled and rehandled many times in going a long distance. Freight coming from Chicago, we will say, by the Burlington, to a point in Missouri, might be, and I think from the information I have gotten about these matters generally since I have been looking into them, would be rehandled at Hannibal; or any other road, would have to receive the shipment from the connecting line at the Mississippi River, unload it, and reload it in some car going out over their line. Whereas a shipment starting from Hannibal or St. Louis would be delivered into the freight house at the proper door, just where it would be put right into the car that the company would use for forwarding it.

Q. Would the cost in that respect of handling interstate less than carload freight be greater or less than the handling of strictly State less than carloads?

A. I think it is more.

Q. You said awhile ago you thought it was less.

A. If I recall, I think I said the cost of handling less than carload interstate business in the State of Missouri was, to my mind, more than the cost of handling State less than carload freight.

1621 Q. I think you turned it around in answer to my first question.

A. I didn't intend to.

The MASTER:

Q. Your judgment is it costs more to handle interstate less than carload freight?

A. Ye- sir.

Mr. LADD:

Q. Is it on account of those two unloadings and one loading in the case of interstate less than carload freight, as against one loading and one unloading in State less than carload freight: is that what you have been talking about?

A. Yes sir. Of course both classes may be handled a number of times; but that comparison you make is right.

If I may add this: both State and interstate less than carload freight is hauled in the same cars. There is absolutely no difference there, as in the case of carload business. It is all in one car. These cars are used indiscriminately for both classes of business. It is all in the car going to a certain point, no matter where it came from or where it is going. If the car is to break bulk and the freight is to go beyond, there is no distinction made between State and interstate business.

Q. You mean by that, that interstate less than carload freight may be, or often is, in the same car with State less than carload freight: is that it?

A. Yes sir.

Judge SPENCER:

Q. Are you referring to first class or second class interstate carload freight?

1622 A. I have in mind, particularly, the second class. Of course, less than carload business is a very small percentage of the tonnage, in any case.

Q. The first class goes right through?

A. No sir. Full cars going right through the State would generally be carload business. I don't think small lots of freight are loaded to go long distances in the same car.

Mr. LADD:

Q. What is the practice?

A. To load them for one or two division points away; and then put them in cars with other freight bound to the same points.

Q. Is there any distinction in that respect between the two classes, State and interstate less than carload freight?

A. I don't think there is any in the way they are handled.

Q. What is your opinion as to the ton mile being the proper

basis upon which to arrive, as well as it can be arrived at, at the earnings and expenses of the freight business?

A. I think it is the only basis. I have thought so from the very first day I began this work.

Q. That is to say, the most accurate results will be obtained as to the relative cost of making the earnings, by ascertaining the average earnings per ton mile, and comparing those with the average cost per ton mile: is that what you mean?

A. As to the earnings, that is strictly correct: as to the expenses, I think that the cost of doing one thing should be compared with the cost of doing another thing; and not with reference to the
1623 earnings in any way. Because, for instance, I have here (indicating paper) a carload of dressed poultry from Kansas City to St. Louis; at the present rates a car weighing 20,000 would earn $66.00. A carload of dry hides in bales would earn $40. I cannot see how the cost of handling those two cars would differ. So that "in proportion to earning" it seems to me is an unknown quantity always.

Q. I mean, taking the whole body of the freight business.

A. Taking the whole body of the freight business, of course the expenses can be worked out. You have the tons, and the tons one mile, and the expenses; and from those figures you get the average expenses per ton per mile.

The MASTER:

Q. Doesn't the example you give tend rather to prove that the revenue would be a more correct basis than the ton mile basis?

A. I don't think so. Exactly the same weight is handled the same distance, and in one case the revenue is $40.00, and in the other case it is $66.00. If the car costs just the same to handle in both cases, then the cost in proportion to earnings is radically different. And these are not extreme cases.

Mr. LADD:

Q. If you get the average cost per ton mile of all the freight, and the revenue per ton mile of all the freight, should that be the purpose and intention of any investigation, to ascertain the profits?

A. Absolutely, I think so: It should be the starting point for every comparison.

1624 Q. Why?

A. Because it is a unit, which could be used for comparison with the same unit arrived at on any other business. It is the unit, and the only one I know of, which is the same in all cases.

Q. What have you to say as to apportioning the expenses of the freight business between State earnings and other earnings, in proportion to the revenue derived from the respective classes of business?

A. I don't think that is a proper basis.

Q. Why not?

A. Because the State earnings are made up, generally speaking, of charges based on the full local rates. Whereas, the interstate

earnings are made up of just whatever proportions of the through rates may happen to accrue to Missouri on a mileage basis. It absolutely ignores the revenue per ton per mile basis. It ignores the fact, as I believe, that the earnings on State business are greatly in excess per ton per mile of the earnings on interstate business: I am making that only as a general statement, but it has to be so.

Q. The earnings derived, therefore, as I understand you, from a higher schedule of rates: is that what you mean?

A. Yes sir, and from something like a fixed schedule of rates as compared with interstate earnings which are not fixed in any way. They may vary with every shipment.

The MASTER:

Q. Do you maintain that a division upon the revenue basis would wholly ignore the fact that they get higher rates from purely State business?

1625 A. Yes sir, I do.

Mr. LADD: We have finished with Mr. Taliaferro on direct examination, unless I should think hereafter of some one or two questions which I have overlooked.

Mr. SPENCER: Without waiving the right of Mr. Hagerman to cross-examine the witness, I should like to ask him a few questions at this time.

Cross-examination.

By Mr. SPENCER:

Q. In answer to the last question of His Honor, you said to arrive at the expense on a revenue basis was wrong, in your opinion?

A. Yes sir.

Q. Because in doing so you ignore the fact that the local rate might be higher, or the rate on State business might be higher, than the rate on through business?

A. The revenue per ton per mile, yes sir.

Q. "Revenue per ton per mile": Let us not speak of that yet. But the rate charged on local freight is higher in the State than on through business?

A. I could not compare those. That is comparing things that absolutely differ. One is the through rate, and the other is the local rate for a short haul.

Q. Didn't you make any comparison between the local and the through rate in your investigation?

A. Yes sir.

Q. Did you find the local rate in Missouri higher than the through rate?

1626 A. For the shorter haul?

Q. Yes.

A. Yes.

Q. Is that the reason it would not be fair to compute it on a revenue basis?

A. That is one of the reasons, generally speaking, that the State rates average higher.

Q. That is one of the reasons why it would not be fair?

A. Because of the fact you do not know how much higher, until you work it out on a ton mile basis, makes it necessary to work it out on that basis, to find out how much higher it really is.

Q. If I get your idea, you believe it should be worked out on a ton mile basis, because that levels the cost, or the rate of doing all kinds of business?

A. It levels the revenue, and then you have a starting point for the application of the expenses.

Q. Take the case we are investigating: This Act we complain of gives only $6.00 a car for moving a carload of cattle.

A. A 29 foot car, yes sir.

Q. $6.00 for moving a carload of cattle twenty-five miles?

A. Yes sir.

Q. And they may be worth $3,000?

A. Yes sir.

Q. Now that same Act gives $15.00 for moving a carload of lumber twenty-five miles?

A. Yes sir.

1627 Q. Which is worth only $150?

A. That may be.

Q. The cost of handling the cattle may be five times the cost of handling the lumber: you can understand how that might be, can't you? The loading and caring for the cattle—assuming that for the purposes of the question?

A. Yes sir.

Q. Take those two shipments, and you level them by reducing them to the ton mile?

A. I first level the revenue by reducing the earnings to a ton mile basis.

Q. Yes, and you make the earnings per ton mile on the cattle the same as the earnings per ton mile on the lumber?

A. Not the same, I get the average on the two.

Q. You get the earnings per ton mile in each instance?

A. Yes sir.

Q. So, although we may have lost money on the cattle, your basis of figuring will show that we made a revenue per ton mile?

A. We have not attempted to show the cost of doing my particular class of business.

Q. You have not?

A. No sir.

Q. I thought you took twenty-seven stations, and figured the cost of doing the business?

A. No sir, those are only the earnings compared with what might have been earned under the statute and commis-

1628 sioners' rates.

Q. Wouldn't the result of your figures bring about an earning per ton mile in the case I have assumed, on both shipments?

A. It could be worked out in each case; yes sir.

Q. And it could be worked out in each case, although in fact there might be a loss on one of the shipments?

A. That is possible.

Q. So it is a question of method of arriving at it? It is the method you have been using in arriving at the revenue and expenses?

A. It is a method, and the only one I know of.

Q. It is the only one you have investigated?

A. I don't say that.

Q. You said it was the only one you knew of?

A. It is the only way to put everything on the same basis for the purpose of comparison.

Q. In your opinion as an expert?

A. Yes sir.

Q. If the other, the revenue basis, happened to be the correct way, you have no complaint to make against the method adopted by Mr. Sturgis, you simply don't believe in it?

A. I am simply giving my idea of the correct way, without in any sense criticising anybody else's.

Q. Your sheet that you introduced here showed the revenue on a mileage basis assigned to Missouri was less than the local rate in Missouri, on a thorough shipment from Kansas City to Chicago, I believe?

1629 A. That is not exactly the point Judge Spencer, I told what amount would be allowed Missouri out of the shipment of cattle from Kansas City to Chicago, and I compared that with the local rate in Missouri for the same haul.

Q. Very well. Now did you mean to convey the idea that the local rate was actually received on that shipment, and less than the amount received was assigned to Missouri?

A. No sir. Using the through published rate.

Q. You said you took a through rate less than the sum of the two locals?

A. Unquestionably.

Q. Much less?

A. It is the rate constantly used.

Q. And, therefore, Missouri's proportion was less than its local?

A. Yes sir.

Q. Do you think that is fair, to make figures to show that that is simply a per cent of the local?

A. I think when as much business goes to Chicago and East St. Louis as does go there from the Kansas City Stock Yards, it is not unfair to compare the revenue allowed Missouri on that business, with the Missouri statute rates.

Q. Taking this statement here of Mr. Ludlam's, in which he mentioned this instance: a shipment from Chicago to Old Monroe, Mo. (indicating Exhibit 22). He figured out that on that shipment the proportion assigned to Missouri is 19.1 per cent of the rate from Old Monroe to Hannibal, or from Old Monroe to East

1630 Quincy; I don't know what station he used, but the rates are the same.

A. To the State line, I should say.

Q. That statement does not show anything about what the rate was from Chicago to Old Monroe, does it?

A. No sir, it only shows the percentage.

Q. But it does not show anything about the actual rate from Chicago to Old Monroe?

A. No sir.

Q. It is misleading in that respect, isn't it?

A. I don't think so; it is what it purports to be.

Q. It purports to be a percentage of the local rate, that never was charged?

A. I say, it is the proportion of the through rates, which are being worked out every day.

Q. Can you take that statement, as an expert, and tell what was charged on that shipment from Chicago to Old Monroe?

A. The foot-note states——

Q. I know the foot note states thay is the per cent.

A. That is a number of rates, ten classes.

Q. Is any one of those classes in this litigation?

A. No sir.

Q. Not a single one of those classes is complained of in this suit?

A. No sir, and it is not gotten up for that purpose.

Q. It takes an expert to tell what it is gotten up for, doesn't it?

A. I think I can tell. I am not an expert, and I can tell.

1631 Q. You don't mean you are not an expert? You are here as an expert, aren't you?

A. I don't call myself an expert.

Q. That is what you are here for, isn't it?

A. I have been in railroad work a good many years.

Q. Did you answer my question, whether you could tell from this sheet (indicating Exhibit 22) the rate charged on that shipment from Chicago to Old Monroe?

A. With the explanation that this does not cover any particular shipment, but is based on all ten classes, I will say I cannot tell what the through rates are, from this sheet.

Q. Would that paper enable the Court, in any manner, to ascertain what the division was between Chicago and Old Monroe, on any rate?

A. No sir.

Q. It would not help the Court any?

A. No sir, not at all.

Q. It wouldn't help anybody, would it?

A. No sir.

Q. It simply disputes the adage that "Figures don't lie?" But they do deceive sometimes?

A. These are not intended for that purpose.

Q. How do you know?

A. I made them.

Q. You made them?

A. I helped to make them.

Q. Why didn't you show the rate from Chicago to Old Mon-

roe, so we could see whether there had been a fair division
1632 or not?

A. Those rates were in our working papers. This statement is a memorandum of results.

Q. Mr. Taliaferro, I want to ask you this question: you say that in your opinion it costs more to handle less than carload lots of through business than it does on State business. That it costs more to handle less than carload freight that is going through the State, interstate, than it does to handle less than carload local freight?

A. I thought I said in answer to your question that I had particularly in mind the second class of interstate.

Q. You said both, but you did say you had particularly in mind the second class, and that is what I want to know, whether you are talking about first class or second class?

A. I do think, as a general proposition, that less than carload business is not loaded to be carried long distances without transfer.

Q. Why did you arrive at that opinion?

A. Because it is not practicable, and is not economical.

Q. How do you know that? Did you ever do any of that work.

A. I have done everything that has been done on a railroad.

Q. You have been in the freight business?

A. Yes sir. I am not testifying to that; but I am testifying only to the general practice, as I understand it.

Q. You were testifying that it was unloaded and loaded again, at terminals like Hannibal, through car load shipments:
1633 You don't know whether that is so?

A. Through carloads?

Q. Through less than carload shipments: when it came, for instance, to Hannibal?

A. I don't know of any case in which it is done.

Q. You don't know any?

A. No sir.

Q. Do you know what the custom of railroads is in dividing the earnings on interstate business: whether it is on a carload basis, or a pro rata basis?

A. If I may refer again to the Wabash, they have a set of percentages, which allows Missouri more than it would get on a mileage basis.

Q. As between that line?

A. Yes sir.

Q. As between foreign lines do you know what the custom is?

A. That, of course, is an entirely different matter. The road gets its share of the through rates, based upon some percentage, or some agreed basis.

Q. On some arbitrary basis?

A. Yes sir.

Q. Did you select these twenty-seven stations on the Wabash, yourself?

A. Yes sir.

Q. Do you know what character of freight is handled at those stations, forwarded from those stations?

A. I did not when I selected them. That is the first thing I did in this work.

1634 Q. You found out soon afterwards?

A. I know it is good agricultural country, and some coal country.

Q. And a heavy cattle-shipping country?

A. Yes, I suppose so. That would operate against us, however, in that character of statement.

Q. I was just asking as to the character of the statement. All you mean to state, when you apply that figuring to the Burlington, is that if the shipments are the same on the Burlington, and the expense of doing the business is the same, you would get the same result?

A. It has no reference to expense, Judge Spencer.

Q. Just revenue?

A. I do not say the results would be the same on the Burlington.

Q. I mean, if you substituted any other name than the Wabash in your computation, the figures would be the same?

A. No sir, I don't say that. I say, if that would hold good on the Burlington, the results would be so and so.

Q. That is what I thought I said: that it would apply to any company, if the conditions were the same. That is all you mean?

A. Yes sir.

Mr. SPENCER: That is all I care to ask Mr. Taliaferro at the present time.

1635 Counsel for Defendant offer in evidence such portions of the Annual Reports to the Board of Railroad and Warehouse Commissioners, made by the Complainant, for the fiscal years ending June 30th, 1903, 1904, 1905, and 1906, as shall be hereafter designated by Defendant's Counsel to Complainant's Counsel; and Complainant's Counsel, if they do desire, may on their part designate any portions of such Reports that they may desire to offer in evidence.

Counsel for Defendant offer in evidence such reports or statements, if any, as have been made by the Complainant, the Chicago, Burlington & Quincy Railroad Company, to the Missouri State Auditor, or to the Missouri State Board of Equalization, during the period of the last three years.

Mr. LADD: I believe, your Honor, we are ready to close *pur* case, with this exception: We want to ask Captain Bradbury a very few questions, as to some of the business in his office in Jefferson City. He will have that looked up.

I want to ask Mr. Ludlam one or two questions.

Some schedules were introduced in connection with Mr. Crosby's testimony, and we were to have an opportunity of cross-examining Mr. Crosby, if we desired. We m-y want to have some schedules prepared on our side, and will introduce them at the next sitting.

Then, of course, there is the question of examination in connection with the results of the investigation of the September waybills.

1636 The MASTER: Will that involve the examination of Witnesses?

Mr. LADD: The experts will want to explain them.

I understood from Gen. Hadley yesterday that he wants to examine one or two witnesses.

Here follows colloquy relative to time for the next hearing.

Recess was then taken until two o'clock, P. M.

1637 After recess on Thursday, November 15th, the following proceedings were had:

CHARLES S. LUDLAM, recalled, on behalf of the Defendant, testified as follows, to-wit:

Direct examination.

By Mr. LADD:

Q. You testified yesterday as to the result of your examination of a certain party of the business of the Missouri Pacific Railway Company for the month of October, 1905?

A. Yes sir.

Q. And in connection with your testimony a statement was offered in evidence which had been prepared by you, marked Exhibit 16: Among other things testified to, and shown on this exhibit, is the gross revenue on interstate carload and less than carload business?

A. Yes sir. Revenue divided between the carload and the less than carload.

Q. Interstate?

A. Yes sir, interstate.

Q. Is that Missouri's proportion?

A. Yes sir.

Q. How did you reach Missouri's proportion in settling upon this figures? Upon what basis? Upon a mileage basis?

A. Yes sir, upon a mileage basis.

1638 Q. The first page of Complainant's Exhibit No. 1 offered in evidence by the Railway Company, fixes its State freight earnings for the year 1905, at $1,649,665.&3: I wish you would assume now, for the purposes of this question, that the results as shown by this Missouri Pacific Statement, which I have just referred to, represent a fair average, and that the situation on the Burlington Road would show substantially the same results proportionately, including a like division of freight into carload and less than carload, both State and interstate: Assume also that the cost per ton per mile, on interstate carload freight, is fifty percent of the gross earnings per ton per mile, and that it costs for State carload freight twice as much per ton per mile as interstate carload, to make its earnings; and for State less than carload freight it costs five times as much per ton per mile to make its earnings; what would have been the net result on the Burlington for the year 1905? Would there have been a profit or a loss?

A. There would have been a profit.

Q. How much of that $1,649,665.73 would have been clear profit?
A. $944,167.64. That is, prior to any charge for taxes or rental.
Q. You do not include the taxes and rentals in any part of your calculations as to the cost per ton mile of earning the revenue?
A. No sir.
Q. Have you prepared a statement embodying your answer to that question in a more elaborate form?
A. Yes sir.
1639 Q. In writing?
A. Yes sir.
Q. It is easy enough, by slight additional calculation, and anyone could calculate what the result would be, if the relative cost per ton per mile of doing the interstate less than carload business had been seven times as much?
A. Yes sir. That is merely a matter of calculation.
Q. By the way, you also made a calculation, which is embodied in this statement, I believe, assuming that the first calculation you have given is upon the basis that it costs one-half of the earnings to earn the revenue from the interstate carload business: is that right?
A. Yes sir.
Q. Fifty per cent?
A. Yes sir.
Q. Have you made similar calculation upon the basis that it costs sixty per cent?
A. Yes sir, and this calculation is included in Exhibit No. 28.
Q. What is the result on the sixty per cent basis? what would be their profit on the State business?
A. $804,088.58.

Cross-examination.

By Mr. SPENCER:

Q. The State earnings you assume to be $1,649,665.73?
A. Those are actual figures, as shown by Complainant's Exhibit 1.
1640 Q. And you say that assuming it costs five times as much to transact that business as it did to transact interstate business——
A. Pardon me, No sir. I first take those earnings, $1,649,665.73, shown by Exhibit 1, and then I apportion those total State earnings between carload and less than carload business, on the basis of the percent which the analysis of the Missouri Pacific figures has shown their State business to be divided between carload and less than carload. On that basis having determined how much of that $1,649,665.73 of State earnings, was derived from carload business, and how much from less than carload, I assume the cost on a unit of fifty and sixty per cent; I assume the cost of the State carload being twice as much per ton per mile as the interstate carload business; and the less than carload business being five times as much per ton per mile as the interstate carload business.
Q. You assume the State carload business to be what?

A. I assume the cost of the State business to be twice as much.

Q. Let me see if I understand that: you divided that between carload and less than carload lots?

A. Yes sir, on the ratio shown by the Missouri Pacific.

Q. That is an arbitrary ratio, as fa- as this case is concerned?

A. Entirely so.

Q. Then you have applied this to the carload business in the State, twice the revenue?

1641 A. No sir, not twice the revenue; twice the cost per ton per mile.

Q. Twice the expense. That it costs twice as much to do State as to do interstate business?

A. Per ton per mile.

Q. Not actually twice as much, but twice as much per ton per mile?

A. Yes sir.

Q. Assuming it costs twice as much in fact, have you made any figures on that? That it actually costs twice as much, measured on the revenue basis? Have you made any figures on that?

A. No sir.

Q. It could not cost twice as much, except twice as much per ton per mile, as you figure it? That is the only way you arrive at the relative cost?

A. That is the only correct method, in my opinion, by which I could arrive at the relative cost.

Q. You assume, then, that the State business costs twice as much as the interstate; and that the less than carload lot State business costs five times as much as the interstate less than carload business?

A. No sir. I assume that the State carload business costs twice as much per ton per mile as the interstate carload business. And I assume that the State less than carload business costs five times as much per ton per mile as interstate carload business.

When I say I assume that, I don't mean to say that is cor-

1642 rect, but I mean to say that these figures present the figures on that assumption.

Q. You don't mean to say the expense of doing the business is actually in that proportion?

A. I don't think it is.

Q. You don't think it is that great?

A. No sir, I don't think it costs anything like twice as much per ton per mile to do the state carload business as it costs to do the interstate carload business.

Q. Can't you tell, as a matter of actual fact, whether it does or not?

A. No sir.

Q. Why can't you?

A. Because the expenses of a railroad company are not divided between the cost of doing State business and interstate business; nor could they be, for the reason that the same train, and the same cars, and the same engines, and the same tracks, are used indiscriminately for both classes of business.

Q. Was that why it was made an expert question instead of a mathematical question?

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A. I think possibly it was.

Q. Do you mean to say you could work out the relative cost of doing the interstate and the state business?

A. I think you could work out the relative cost per ton per mile, not exactly, but approximately.

Q. Just approximately?

A. Yes sir.

1643 Q. That is what I am getting at whether it could be ascertained, to a mathematical certainty?

A. No sir.

Q. On either basis?

A. No sir, in my opinion it could not.

Q. Therefore, it is a matter of opinion between experts, as to the relative cost, isn't it? Whatever their method of arriving at it may be, it is purely a matter of expert opinion?

A. I would say it was purely a matter of opinion as to the cost per ton per mile, yes sir.

Q. Is it possible for you, as an expert to find the actual cost of doing the local business? Where you are given the volume of business, and the rate at which it is done, and the distance it is moved?

A. No sir.

Q. It is not?

A. No sir, I don't think it is.

Q. Why did you take this fifty per cent basis? Is that a fact that that is the basis of expense, fifty per cent? You first used fifty per cent, and then sixty per cent, in this Exhibit No. 28?

A. Yes sir.

Q. Is that an arbitrary per cent?

A. Yes sir, that is an arbitrary per cent, based upon the general experience of railroads, upon the average.

Q. That operation costs fifty per cent?

A. That it runs somewhere between fifty to sixty per cent, roughly, of gross earnings.

1644 It is extreme, isn't it? You don't know of any railroad that operates for fifty per cent?

A. On their freight business?

Q. Yes.

A. The Burlington does for fifty-three per cent of their total freight business.

Q. That is very low, isn't it?

A. I think so.

Q. Would your result change any if that per cent was increased and if so, in what direction?

A. Each per cent of difference would, of course, change the figures materially. But the exact difference that would exist between fifty per cent and sixty per cent are shown in these figures here.

Q. Suppose it cost eighty per cent to operate, what would be the result?

A. The same relative difference.

Q. The same relative difference between less than carload and carload, and State and interstate business?

A. Yes sir.

Q. So it would not affect the relation between the State and interstate carload, and the State and less than carload and the interstate less than carload, business?

A. Not up to a reasonable percentage.

Q. Put it at eighty.

A. But you could carry that to a point where the expense would be so large on this basis that all of the revenue from the interstate business would be absorbed by the expenses, and there would still remain a profit from State business.

1645

In other words, if you took your average earnings per ton per mile from your carload business—interstate—and assumed that the operating cost was one hundred per cent of that, so there would be no profit whatever remaining, and then assumed that your State business cost twice as much per ton per mile to handle as that interstate carload business, you would still have a profit left on your State carload business; and the same would hold true on interstate less than carload business.

Q. Notwithstanding the fact that it cost twice as much?

A. Yes sir, notwithstanding the fact that it cost twice as much, because the rates on the average are a good deal more than twice the interstate rates per ton per mile.

The MASTER:

Q. What are these figures, fifty per cent, and sixty per cent, relatively, as shown on your Exhibit No. 28? To what do they refer?

A. To the ratio of cost to revenue. In other words, if it cost fifty cents to earn a dollar on interstate carload business, then the cost would be fifty cents and the profit would be fifty cents.

In the fifty per cent column I am using fifty as the unit.

In the column headed "sixty per cent" I am using sixty as the unit. That is, if it costs sixty cents to earn a dollar in interstate carload business, there would be forty per cent profit.

Q. Both per cents refer to interstate carload business?

A. Yes, as a unit. Now I take the unit in the case of State carload business, and multiply it by two, to get the cost of State carload business. In less than carload business, I multiply that unit by three, five and seven. This is shown on Exhibits 17 and 18.

1646

Mr. SPENCER:

Q. Haven't you in your computation reached the expense of doing business on a per ton per mile basis, haven't you taken hauls of 350 and 450 miles, where the revenue would be made so thin that it would not—or, as you characterized it, "The longer the haul the thinner the revenue?"

A. Yes sir.

Q. When you take a large volume of business for a long haul, don't you get a lower rate on that business, and consequently a lower cost per ton per mile for doing that business?

A. You get, in my judgment, a lower cost per ton per mile; but, on the other hand, you get a much lower revenue proportionately, per ton per mile. So the ratio, in my judgment, of cost to earnings, is

a great deal higher on the long haul that has the thin revenue than on the short haul business that has large revenue.

Q. You mean the revenue is greater on the long haul?

A. No sir, the revenue o- the long haul per ton per mile is less. And even if the expense is less the revenue is proportionately smaller than the expense, so the longer the haul the thinner the revenue, and the greater the per cent of operating expense to revenue.

1647 Q. That is, the les revenue from it?

A. Yes sir.

Q. As I understand you, then, you mean that the railroad would make less revenue on a car that passed through Missouri, without stopping in Missouri anywhere, but passing over the line in Missouri, than on a car that was handled in the State?

A. Per ton per mile, unquestionably.

The MASTER:

Q. And yet make more revenue?

A. No sir, make less net profit per ton per mile.

Mr. SPENCER:

Q. Take a car containing ten tons, going from St. Louis to Kansas City, 280 miles, $120.00 revenue, isn't it?

A. Assuming the car contained only ten tons, the revenue would be $120.00.

Q. We haul that to Kansas City for $120.00?

A. Yes sir.

Q. You reduce that to a per ton per mile basis by taking the number of miles and apportioning that ten ton 2800 miles, isn't it?

A. Yes sir.

Q. And you get how much per ton on that? Two cents?

A. I make it over four cents.

Q. 2800 ton miles?

A. Yes sir, $120.00.

Q. Well, call it four cents.

A. It is four and a fraction cents per ton.

1648 Q. You say the greater that haul the less the expense and the more the revenue we would get out of it? Our revenue per ton mile would be increased?

A. No sir, your revenue per ton mile would be decreased.

Q. But you say the expense would be increased in proportion?

A. In proportion, yes sir.

Q. So we would make about the same on it?

A. No sir.

Q. Would we lose anything on it?

A. I think there are a great many of your interstate long haul shipments that you do actually lose money on, if you apportion all of the general expenses and maintenance expenses against that specific ton.

Q. What I want to get at is, we ship that same car, loaded exactly as it is, four hundred miles in Missouri, at the same price?

A. Oh no sir.

Q. We do for the same aggregate sum. That is our rate from St. Louis to Watson, four hundred miles. We haul tha- car for that same sum $120.00.

A. But you haul it four hundred miles.

Q. I say, four hundred miles.

A. Therefore the revenue per ton per mile is less.

Q. But you say it will maintain in its relation to the expenses.

A. No, pardon me, that is not what I meant to say. I say, the expense would not decrease in the ratio of the decrease
1649 in revenue. In other words, if you haul it 200 miles, and get four cents a ton a mile; and you haul it 400 miles and get two cents a ton a mile; while the expenses on the 280 miles haul may be, we will say for the purpose of illustration, 2 cents a ton a mile, the cost of the haul of four hundred miles would be 1.9 cents, but there would be a decrease of revenue of fifty per cent.

Q. In making up the figures for the Missouri Pacific and Wabash, you have taken the rates, for instance, from Kansas City to various stations between Kansas City and St. Louis?

A. On that Wabash Statement?

Q. Yes.

A. We have made those up from actual way-bills; that is the actual amount the Missouri Pacific received.

Q. You know the Burlington has to meet the short line rate from Kansas City to St. Louis, which is the Wabash?

A. Yes sir.

Q. That is 280 Miles?

A. Yes sir.

Q. Now those figures couldn't possibly apply to the Burlington, if the Burlington hauls its stuff 400 miles to Omaha at the same prices that the Wabash hauls from St. Louis to Kansas City?

A. Not in that specific instance.

Q. In all instances if the freight goes that far?

A. In other instances the Burlington may be the short line and the Missouri Pacific may be the long line.

1650 Q. But it couldn't in Missouri, could it?

A. I don't know. I am not very well acquainted with the railroad map in Missouri.

Q. The longest line is the Burlington, and it is 400 miles from St. Louis to Omaha, or Council Bluffs, and our rate from St. Louis to the river, at Watson, or near the Iowa Line, is the same rate as the Wabash from St. Louis to Kansas City, and it must be, under commercial conditions.

A. And that same principle holds good on the long shipment and on your State shipments. So that tends to decrease your revenue per ton per mile, the further you go.

Q. But what I was getting at was, whether there could be possibly, under the geographical and physical condition of these two roads, any figures that could be made to apply to the Wabash and to the Missouri Pacific that could, in justice, be applied to the Burlington?

A. I am expressing this as a matter of opinion, because I have not examined the Burlington records, but I think probably a de-

tailed analysis of the Burlington way-bills for any month would show relatively the same earnings per ton per mile on State business that the Missouri Pacific figures show. There might be a little difference, but it would be a fractional part of one per cent, in my opinion.

Q. You know as an expert, don't you, that if the full local rate in Missouri were charged on interstate business take it from
1651 Chicago to Old Monroe, the illustration you made there, the rate from Hannibal to Old Monroe was twenty-three cents, we will say: if that rate was plus the local rate from Quincy to Chicago, which is about forty-five cents, that makes it about seventy cents. If that rate was absolutely in effect it would prevent a good many shipments to Old Monroe, and a great deal of interstate freight into Missouri, wouldn't it?

A. Yes sir; and that illustrates very forcibly our point, that in order to do that long haul and competitive business you have to make low rates. Nobody questions that. You do make them. But when a large part of your—State business you do not have to make low rates. Your rates are high, and you get the high revenue per ton per mile.

Q. In the State business?

A. Yes sir.

Q. But your position is that it does not cost us any more to do the business. There is where we differ about it. You know these rates are necessary; that reduction of interstate rates, in order to keep a wall from being built around Missouri, don't you?

A. On the contrary, in Exhibits 17 and 18, I assume, although personally I don't believe that is the correct basis—but I assume, in order to be liberal—or, I will say, even assuming that the State freight cost twice as much per ton per mile as interstate, you would still have a larger percentage of revenue left.

1652 Q. You mean on your basis?

A. My basis is what the way-bills of the Missouri Pacific show, not an assumption, or opinion, but actual facts.

Q. You don't know what the rate is from Hannibal to Old Monroe?

A. I do not.

Q. The first class rate there is 25 cents, and the next large station west is Shelbina; the rate from Hannibal to Old Monroe is 23 cents, first class; the rate from Old Monroe to Shelbina, a few miles further west, is five cents. But the rate from Hannibal to Shelbina is not 23 cents plus 5 cents, but it is 25 cents plus 3 cents.

A. Yes sir.

Q. You see that?

A. Yes sir.

Q. So if we put the local rate from Shelbina to Old Monroe, we have to put in a rate of five cents, and it goes on to Old Monroe and gets the benefit of that reduction?

A. Yes.

Q. Isn't that the principle in this interstate business?

A. Yes, sir, absolutely. In other words, you haul that shipment

the further mileage, and get that revenue, but your cost increases with each additional mile, while your revenue does not.

Q. We have to have the five cent rate between Old Monroe and Shelbina, because when we ship there we have two terminals.

A. Yes sir, I do not question that.

1653 Q. That illustrates it. And when you ship from Hannibal to Shelbina you have the same two terminals?

A. Yes sir, and it costs you more to actually haul freight from Hannibal to Shelbina than to the other place, and in both shipments you have two terminals, and in both cases the revenue is the same.

Q. But we are not discriminating against any Missouri rate because we — not charge the full rates from Shelbina to Old Monroe?

A. No sir, but that is an illustration that the further you go, the more your cost in proportion to revenue.

Q. You or Mr. Taliaferro made out a statement, presumably for the information of the Master, and you showed the low per cent that we allowed to Missouri on inter-state shipments, compared with the local rate in Missouri, didn't you?

A. Yes sir.

Q. And that was to illustrate the division on a mileage basis, that we made in this case, wasn't it?

A. No sir.

Q. We decide on a mileage basis between the other State and Missouri?

A. Yes sir.

Q. And you were showing that we gave credit to Missouri for less than we ought to, because we ought to have divided on a pro rate by rate basis?

A. That statement was intended to show two things, if I

1654 may answer fully: one, that the interstate earnings credited to Missouri would have been larger if divided on a pro rate basis.

—. Why didn't you show that?

A. We think that the statement does show it. It also shows taking your instance, that, for hauling a car from Hannibal to Monroe, that originates in Chicago, you get only nineteen per cent as much as you do for hauling a car from Hannibal to Monroe that originates at Hannibal. Certainly there could not be much difference in the actual cost of hauling freight, because both fill the car, both are switched at Hannibal, both are hauled over the same track, by the same engine, by the same crew, in the same train, and both are set out on the Monroe siding to be unloaded—and yet in the case of the interstate shipment, although the cost is the same, with an additional slight expense for the terminal at Hannibal, the revenue is only nineteen per cent of the rate charged from Hannibal to Monroe on the local shipment.

Q. What are you criticising, the division on a mileage basis, or the rate?

A. I am not criticizing either.

Q. You are simply stating the fact?

A. I am stating the fact to show that on the State business, and on the short haul business, your percentage of cost to revenue is much less.

Q. On the State business?

1655 A. Yes, On short haul business. Of course the State business is on the average a much shorter haul than the interstate business.

At this point the further hearing of testimony herein is adjourned to Monday, December 3rd, 1906, at ten o'clock, A. M., then to be resumed in the Federal Building, in the City of St. Louis, Missouri.

1656 ST. LOUIS, Mo., *December* 11, 1906.

In pursuance of adjournment, the hearing in the above entitled cause is this day resumed, at the Federal Building, in the City of St. Louis, Missouri.

Present: Hon. F. L. Scofield, Special Master; Hon. O. M. Spencer and Frank Hagerman, for the Complainant; and Attorney General H. S. Hadley and Ass'ts Attorney General John Kennish and Rush C. Lake, and Mr. S. B. Ladd, for the defendants.

The following proceedings were had:

General HADLEY: I have a few questions I desire to ask Mr. Ludlam and Mr. Taliaferro. We intended to ask those questions after we had examined the September way-bills.

The MASTER: Have you those way-bills now?

Mr. HADLEY: No sir. There were some questions that would be more intelligently asked after that examination is finished, but there are some questions we can ask them now.

Mr. HAGERMAN: Do I understand that some time in the future you propose to go back and open up the examination?

Mr. HADLEY: This bears upon the general feature of the three-fold ratio or general expense of doing State as compard with interstate business.

Mr. HAGERMAN: The understanding has been rather indefinite as to dealing with them as experts, with what showing they get from these way-bills, from the Burlington road itself. That ought to be an independent examination.

Mr. HADLEY: It will be.

Mr. HAGERMAN: I thought you were going to do that now.

1657 Mr. HADLEY: No sir, I am going now into what the Master called the three-fold ratio. We expected to go into that after the examination of the September way-bills, but that has been so delayed that we propose to ask Mr. Ludlam and Mr. Taliaferro some questions on it now.

The MASTER: I can see no objection to that. When those way-bills have been furnished counsel have a right to examine the witnesses in respect of them, or, I take it, introduce further testimony by their own experts upon that subject.

Mr. HAGERMAN: I don't like to go into that question so far as it bears upon the Burlington road until we get the full views of the experts. I don't think it is fair to have him fire in the dark, and then go back and amend his statements. They have been dealing

so far with the statements of other roads, upon which we are prepared to cross examine them.

Mr. HADLEY: You do not understand. I am not going into the proportion of State and interstate freight as shown by the September way-bills, now, because we haven't them.

Mr. LADD: There has been a large amount of expert testimony introduced at Chicago by the complainants, upon the relative cost, or extra cost, it is said, of doing the State business; Now we want to ask Mr. Ludlam and Mr. Taliaferro, as experts, general questions of the same character.

Mr. HAGERMAN: My suggestion is to deal with it all at one time, and not take it up piecemeal.

1658 Direct examination of CHARLES S. LUDLAM, continued as follows:

By Mr. H. S. HADLEY:

Q. Mr. Ludlam, you testified at Kansas City as to your experience in the railroad business, did you not?

A. Yes sir.

Q. You are familiar with the general method of the operation of what are called "local freight trains" and "through freight trains"?

A. In a general sense, yes sir.

Q. And are you familiar with that subject both from actual connection with the operation of railroads and also as an expert, from an examination of the accounts, and the general way in which railroads are conducted?

A. I should say from my familiarity with accounts, and experience with accounts, rather than with the operating Department of a railroad.

Q. You were present at Chicago at the time Mr. Sturgis testified?

A. Yes sir. I heard a part of his testimony, but not all of it.

Q. What you did not hear you have since read?

A. Yes sir.

Q. You heard his testimony as to the effect that in his opinion it cost from three to seven times as much in proportion to revenue to do the State freight business as it did to do the interstate business?

A. Yes sir.

Q. You so understood the testimony, did you?

1659 A. Yes sir.

Q. Now I want you to give to the Master, if you will, briefly, your ideas of the correctness of that theory advanced by Mr. Sturgis?

Mr. HAGERMAN: That is objected to because the witness is not competent or qualified to express an opinion upon the subject.

The objection is overruled.

A. I think there may be some increased cost of handling State business as compared with interstate business, on account of the carload State business moving on the average a shorter distance than

the interstate carload business. I think that increased cost is far more than off-set by the increased revenue which is realized from the State business as compared with the interstate business. Therefore the proportion of cost to revenue is considerably less in the case of State business than it is in the case of interstate business.

Q. What do I understand your meaning to be as to that? Instead of there being an increased cost of doing State business as compared with inter-state business, in proportion to revenue, that it is the other way, and there is an increased expense in doing interstate business as compared with State business, in proportion to revenue?

A. Yes sir. That the proportion of cost to revenue would be greater in the case of interstate earnings than in the case of the State earnings.

1660 Q. In other words, it would require the expenditure of a larger sum of money to produce a dollar in earnings in the interstate business than to produce a dollar in earnings in the State business?

A. Yes sir, that is my opinion.

Q. Tell the Court why you think so.

A. Well, because the rates on State business average very much higher than the rates on interstate business, both carload and less than carload business.

Q. How much higher, in the State of Missouri, from your investigation, would you say they average higher?

A. In the case of carload freight, I should say that the average earnings per ton per mile on state freight were nearly double what they were on interstate freight. And in the case of less than carload, they were a little less than double on State than on interstate freight.

Q. A little less than double?

A. Yes sir, not quite double.

Q. And how about the relative cost of doing the less than carload State business as compared with the less than carload interstate business?

A. My opinion is that the expense of doing less than carload business would be less in the case of interstate than State freight, for the reason that the interstate less than carload freight moves, on the average, further than the State less than carload business; and the expense of the less than carload business is increased in accordance with the distance of the haul, for the reason that the less than carload business is, generally speaking, largely loaded and un-

1661 loaded at each terminal.

Q. In the case of carload business, the cost of handling decreases with the distance hauled, up to the extent of one division point, does it?

A. I should say, up to a certain point.

Q. You make that distinction?

A. You mean I, personally?

Q. No. What is the distance at which you get the minimum of

expense in handling carload business? Is it one division point, or two divisions?

A. I should say it would exceed one division.

Q. In the case of less than carload business, the increased length of the haul in interstate traffic increases instead of decreases the expense?

A. Increases the cost per ton mile, in my opinion.

Q. What is your idea as to whether there is any relation at all existing between the cost of handling the average ton of freight per mile in State freight business, as compared with the average expense of handling a ton of freight per mile in the interstate business,—in relation to revenue: Do the expenses bear any relation to it? Do I make my question clear?

A. I don't think you do. I did not quite follow it.

Q. Upon the theory advanced by Mr. Sturgis, that the increased expense of State, as compared with interstate traffic, in proportion to revenue, was three to seven—is there any relation existing which is in any way a basis of calculation, between expenses and
1662 revenue, unless you take into consideration the average revenue per ton per mile upon State as compared with interstate freight?

A. In my judgment there is not.

Q. You might just as well take the proportion between men and women, to divide the expenses, or divide the revenue on?

A. Yes sir, exactly.

Q. What do you understand from the testimony of Mr. Sturgis, and from the reading of it, as to the reason upon which he predicated his three-fold ratio of increased expense?

A. Well, that that was his opinion.

Q. Based upon what?

A. Based upon his experience; his familiarity with railroad accounts.

Q. If I recall correctly, it took into consideration all the different elements involved in the handling of interstate and State freight, and particularly what are known as local and through freight trains?

A. Yes sir.

Q. And he took into consideration the increased distance which the interstate freight is hauled as compared with State freight?

A. Yes sir.

Q. What about the increased expense of handling the average ton of freight per mile on local freight trains, as compared with through freight trains?

A. There is, unquestionably, a large increase in the expense of handling business on a local train, as compared with hand-
1663 ling business on a through train.

Q. Is it fair, in your opinion, to assign all the increased expense in the operation of local trains to the handling of local or State freight?

A. Absolutely not.

Q. Why not?

A. Because local trains are engaged as extensively in handling

interstate business as they are in handling State business. As a matter of fact, our examination of the Missouri Pacific shows that interstate less than carload business is nearly double the amount of the State less than carload business. And, assuming that the less than carload business is handled largely by the local trains, which is the condition, that would apportion the larger part of the local trains' expense to the interstate business.

Q. You say you found that from an examination of the books of the Missouri Pacific railroad?

A. We found that as a result of our examination of their books.

Q. For how many days?

A. For the month of October.

Q. Let me see if I understand you correctly upon that proposition: For instance, say that the tons of less than carload freight hauled by local freight trains of the Missouri Pacific Railroad, in the month of October, were 100,000 tons a mile, and that more than 50,000 of those tons were interstate freight in less than carload lots?

A. Yes sir.

1664 Q. So instead of the additional expense of operating the local freight trains being entirely assigned in that instance to the State freight, more than half of that additional expense should be assigned to the interstate less than carload freight?

A. Considerably more.

Q. Why considerably more? No more than the proportion of the two?

A. Even on the proportion of the two, it would be considerably more.

Q. What was the exact division you had there?

A. The less than carload interstate business for the month of October amounted to 17,240 tons, whereas the State less than carload business amounted to only 9,393 tons.

The MASTER:

Q. To what road are you now referring?

A. The Missouri Pacific; our examination for the month of October. The exhibit we put in was prepared before the work was finished, and covered, as the exhibit stated, about fifty per cent of the interstate, and ninety per cent of the interstate. These figures I have now given cover all the figures for the month of October, for the Missouri Pacific.

Mr. HADLEY:

Q. Have you the figures for the percentage of State and interstate freight handled by local freight trains during the same month?

A. Pardon me, but I was going to say, in connection with that other, that I could give the ton mile figures, if you would like that.

Q. Yes, give those.

1665 A. The interstate ton miles amounted to 2,561,334; the State less than carload amounted to 1,068,074.

Q. Have you the proportion between State and interstate freight, in carload lots, for that time?

A. Not for the month of October. We prepared a statement showing the distribution of carload freight for the first three days in October.

Q. What did that show?

A. You haven't that statement here yet.

Judge SPENCER:

Q. What portion of the Missouri Pacific railroad did the investigation you are now testifying about embrace? You said you had a month's figures there.

A. It covers all of the freight which touched the State of Missouri on the Missouri Pacific, during the month of October.

Q. Everywhere?

A. Yes, in the State of Missouri.

We made an examination for the purpose of showing approximately the relative amount of State and interstate business in carload lots handled on the Missouri Pacific Railroad for a period of three days. To do this, we took all the way-bills handled by the Missouri Pacific, dated October 1, October 2 and October 3, 1905.

Mr. HAGERMAN:

Q. You made that examination for what purpose?

A. The tonnage of carload freight on a ton mile basis, handled in Missouri by the Missouri Pacific Railroad, on through
1666 and local trains, respectively; as a result of the way-bills made on October 1st, 2nd and 3rd, 1905. The assignment of cars to through and local trains was based on information furnished by the Missouri Pacific, as to the classes of trains run on the various portions of the road in Missouri, and on testimony given by the operating officers in the Burlington hearing, as to the customary way of handling freight traffic.

Mr. HADLEY:

Q. You determined first the amount of the State and interstate carload business, and then you apportioned them between local and through freight trains, according as the testimony in this case shows such busines was usually handled?

A. Yes sir.

Q. And in the case of less than carload freight you assumed that all of that was handled by local freight trains because that is the usual manner of handling that class of freight: is that right?

A. No sir. This statement was made up to cover only carload business.

Q. But the figures you have already given, as to less than carload freight, is divided between State and interstate?

A. Yes sir.

Q. What do you say as to that portion of the business handled on local freight trains—less than carload business?

A. I say it is a fair assumption to assume that all less than carload business was handled on local freight trains.

1667 Q. Is that a fair assumption? That is, in your opinion, based upon the testimony, and also your knowledge of the operation of railroads?

A. I don't know that I would say all of it. But the proportion that was handled on local trains and the proportion that was handled on through trains, would be the same between State and interstate. Of course, the larger part of less than carload business would be handled on local trains, but I would not say that the through trains would not handle a car loaded with less than a carload.

Q. The greater proportion would be handled by the local trains, although all of it might not be: Is that right?

A. Yes sir.

Q. The carload business you divided, after you determined its amount, between local and through freight trains, upon the basis of division according to the testimony in this case and your knowledge of the operation of railroads?

A. It is based on what we call "ideal operation".

Q. Is it your opinion, as a former railroad operative, and also an expert in this business, that that would be the way it would be handled?

A. As a general proposition, yes.

Q. What was the division of carload State and interstate freight, as between local and through freight trains?

A. Of the total tonnage handled by the through trains 91 and a fraction per cent would be interstate freight, and 8.9 and a fraction--nearly nine per cent of the tonnage handled by through trains would be State freight.

1668 Q. What proportion of the entire tonnage was the State freight?

A. 14.92 per cent.

Q. Then there was five per cent of the State freight that was handled upon local freight trains more than what would have been the proper proportion had the two classes of freight been divided between local and through freight trains, according to the amount of their volume: is my question clear?

(No answer.)

Q. Let me put this proposition: if the total tonnage handled in the State of Missouri for a certain period was, say, 100,000 ton miles of freight; say that ninety per cent of that was interstate, and ten per cent was State freight——

A. Yes sir.

Q. Now if the local freight trains handled, say, 40,000 tons of freight, and the through freight trains handled 60,000 tons of freight; and the State freight handled upon the local freight trains was the same in relation to the interstate freight that is handled upon the State trains, as the two bear to making up the total, then the expense of doing the two classes of business would be the same, wouldn't it?

A. Unquestionably, yes.

Q. So, if upon the local freight trains there had been 9.9 per cent of the volume of that traffic during that period State freight,

then you would say, wouldn't you, that the expense of handling the average ton of freight in the State freight business, was the same as the expense of handling the average ton of inter-
1669 state freight?

A. If the tonnage handled by the two classes of trains agree with the total tonnage handled by the Company, the cost would be identical.

Q. But you found, instead of 9.9 per cent of State freight being handled by local freight trains, there was 14.92 per cent of the tonnage of the local trains that was State freight?

A. No sir, you did not understand me.

Q. What percentage of the local freight trains' tonnage was State freight?

Mr. HAGERMAN: 91 per cent was through State and 9 per cent State?

A. Of the tonnage of through trains.

Q. Now he is asking you the same kind of percentage as to the local trains?

Mr. HADLEY: Yes. I see where I made my mistake. Of the total tonnage carried during those three days, 14.92 per cent was State freight?

A. Yes sir.

Mr. HAGERMAN:

Q. You spoke of 14.92 per cent?

A. Yes sir; 14.92 per cent of the total carload business, ton miles handled by the Missouri Pacific on those three days, was State freight, and 85.08 per cent was interstate freight.

Mr. HADLEY:

Q. Then, as I understand the result of your figures, there was 9/14 of the entire State freight for that period that was
1670 handled just as cheaply as the interstate freight that was handled upon through freight trains?

A. Yes sir, that is correct. You use round figures, but there is a little fraction that attaches to each.

Mr. HAGERMAN:

Q. Where do you get 9/14?

A. Out of the 15 per cent of State freight, 9 per cent was handled by the through trains.

Judge SPENCER:

Q. Nine per cent of the 14?

A. Nine per cent of the 100.

Mr. HADLEY:

Q. What per cent of the tonnage of the local freight trains was State, and what percentage was interstate freight, during that period?

A. 53.43 per cent was interstate freight, and 46.56 per cent was State freight.

Q. Then the local freight trains, during that period, handled more interstate freight than they did State freight?

A. They handled more interstate carload freight than State carload freight, and undoubtedly a great deal more interstate less than carload freight than State less than carload freight.

Q. Why did you select these three days?

A. Just to get my three days. We took the first three days in October because we were working on October.

Q. I believe Mr. Gray of the Great Northern Road stated that in taking typical months they included October?

A. Yes sir.

Q. Is October regarded as a typical month?

A. We thought it typical.

1671 Q. Were there any unusual conditions existing in the first three days of October that would affect the State or interstate business?

A. Not to our knowledge.

Q. From your knowledge of the general situation of railroads, both as an operative and an expert, what would you say would be the increased expense, if any, of handling the average ton of State freight, as compared with the expense of handling the average ton of interstate freight? I am not speaking now in proportion to revenue, but just in a broad way.

A. I should say it might run from ten to twenty-five per cent.

Q. And against that you would have twice as much earnings upon the interstate as upon the State freight?

A. Yes sir.

Q. Is it your opinion that twenty-five per cent would be the maximum?

A. Yes sir. It is very hard to form a definite opinion, for the reason that there are many conditions where there would be no increase in expense while the revenue would be greatly increased. And in many cases of short haul the two terminal expenses might exceed twenty-five percent. But that would be more than offset by the increased revenue.

Q. Take the case of the Burlington; have you, both from investigation, and hearing the testimony, and in conversations, undertaken to acquaint yourself with the topographical and industrial conditions

1672 that might affect the proportion of interstate and State freight upon the Burlington railroad in Missouri?

A. I would say only in a general way.

Q. You have studied the map and the location of the towns?

A. A little.

Q. And you know the location of the rivers?

A. I know the location of the rivers, but I don't know a great deal of the topography of the country.

Q. Do you know the freight divisions of the Burlington?

A. As I have heard them testified to here—yes sir.

The MASTER:

Q. Let me see if I understand you. The difference in your opinion, and in the opinion of Mr. Sturgis, who testified on the part of the Complainant, is substantially this: that whereas in his opinion it costs three hundred per cent more to handle the local freight than the interstate, in your opinion its costs only ten per cent more?

A. No sir. If you will permit me to make an explanation: Mr. Sturgis' testimony was that it cost three to seven times as much, proportionately to revenue. Now if the revenue was double that would make Mr. Sturgis' proportion from 600 to 1400 per cent. Whereas I say that the cost, without regard to revenue, would, in my opinion, be increased from ten to twenty-five per cent—or something like that.

Mr. HAGERMAN: We object to that statement of what Mr. Sturgis testified to, because it is not what Mr. Sturgis testified at all, nor has it any semblance to what he testified to.

The MASTER: That will not affect the tryer of the fact.

1673 Mr. Sturgis' testimony will not be judged by what this or any other witness says it was, but by what it was.

Mr. HAGERMAN: I don't think he has answered your question.

Mr. HADLEY:

Q. On the basis of what you understood to be Mr. Sturgis' tertimony, in comparing the expense of doing State and interstate freight business in proportion to revenue, would there be any increased expense in the doing of the State business?

A. In proportion to revenue?

Q. Yes.

A. In my opinion, the expense would be much less in the case of State than in the case of interstate freight.

The MASTER:

Q. Then what figure would you place against the 300 per centum, as you understand the testimony was the percentum fixed by Mr. Sturgis? What per centum would you place against his three hundred per centum?

A. Roughly, 60 per cent.

Mr. HADLEY:

Q. That is, if I understand you correctly, you say the increased cost of doing interstate business, compared with the cost of doing State business, in proportion to the revenue, would be sixty per cent?

A. Yes sir, I think, as an approximation, in proportion to revenue, it would cost only 60 per cent as much to do the State business as to do the interstate business.

Q. So there would be a 40 per cent increase in the doing of interstate, as compared with the doing of State business?

A. There would be a difference between the 60 and 40

1674 per cent; but that would amount to more than 40 per cent and 60 per cent.

Q. You state Mr. Sturgis' proposition, from your standpoint.

You say, as I understand you, that instead of Mr. Sturgis being correct, (in your opinion), that it would cost three to seven times as much to do State business as compared with interstate business, in proportion to revenue, that it is reversed, and there is an increased cost in the doing of interstate business as compared with State business: Now how much is the expense increased in proportion to revenue?

A. As compared to revenue, I should say the expense of doing State business would be about three-fifths as great as the expense of doing interstate business.

Q. Can you express it in the same percentages that Mr. Sturgis used?

A. Three-fifths, I said.

Q. Three-fifths of what?

A. Three-fifths of one.

Q. You mean, then, it would be the ratio between three-fifths and two-fifths?

A. Assuming that the interstate business costs five-tenths of the revenue, the State business would cost three-tenths of the revenue.

Q. Then, according to your figures, if the cost of producing a dollar in interstate business was one dollar, in your opinion the cost of producing a dollar in the State freight business would be sixty cents?

A. Yes sir—very roughly, that is it.

1675 The MASTER:

Q. Then if I understand you, you would totally expunge, or wipe out, the 300 per cent stated by Mr. Sturgis, and substitute therefor a cheaper rate, 40 per cent less on State than on interstate business?

A. Yes sir.

Judge SPENCER:

Q. It costs 40 per cent less to do State than interstate business?

A. Yes sir, in proportion to revenue.

Mr. HADLEY:

Q. I understood that Mr. Howard Elliott testified that in his opinion it would have cost three times as much to handle the average ton mile of freight in the State freight business as to handle the average ton mile of freight in the interstate business, without reference to revenue; and six times as much on the basis of revenue; did you so understand his testimony?

A. No sir.

Q. What understanding did you get from it?

A. My understanding was, and what I think Mr. Elliott had in mind, that it would cost three to six times as much to operate local freight trains as through interstate trains. I don't think he made the distinction; I don't think any of the witnesses in this case have made the distinction between State and interstate, where they used the word "local" or referred to local trains. Nobody questions but

that it costs more to operate local trains than through trains. But both trains handle indiscriminately State and interstate freight.

Mr. HAGERMAN: We object to this witness undertaking to
1676 state what Mr. Elliott's testimony was. Your Honor remembers that there was a misunderstanding between counsel as to the use of the word "local", and Mr. Elliott went back and was re-examined as to the use of the word "local", as meaning State business, and expressed his deliberate opinion, as to what was the difference between State and interstate business.

The MASTER: I am of the opinion that if the objection is taken upon the ground that one witness, introduced as an expert, should give his opinion without respect to what the opinion of another witness might be, and without reference to what the other witness is supposed to have testified,—the objection might be well taken. But there is no danger of misleading the Court by a statement of what the testimony of another witness was.

The misunderstanding is fully as likely to be upon the part of the witness, as upon the part of counsel or the Court.

But as objection is not taken upon that ground, I will over-rule it.

Mr. HAGERMAN: We will put it upon the other ground, if your Honor pleases.

Mr. HADLEY: I do not mean to violate a rule of evidence, that would be recognized in a jury case; but I merely wished to have the witness identify a certain part of the testimony.

The MASTER: If the testimony is given as expressing his opinion as to what another witness testified to, I will sustain the objection.

1677 Mr. HADLEY:

Q. What is your idea of the proposition of assigning all of the expenses of operating local freight trains, as compared with the expense of operating through freight trains, in carrying a ton of freight a mile, to the State freight business.

A. It would be wrong.

Q. Take the topographical and industrial conditions incident to the operation of the Burlington railroad, and give to the Master your idea as to whether there is anything in the situation of that road, in that regard, which would affect or cause the amount of interstate or State freight handled by the local trains to be abnormal?

A. No sir. In my opinion the tonnage of the trains would correspond very closely to the total tonnage of the different classes of freight business. Of course, there would be a little more of the State business handled on local trains—that is, a little larger per cent of the State business than of the interstate business. But the interstate business is so much larger as a whole than the State business that the tonnage would be composed far more largely of interstate than of State business.

Q. That is, if the State freight traffic in a certain period was ten per cent of the entire State traffic, is it your idea that the ten per cent of the volume of traffic handled by the local freight trains upon

the Burlington Railroad would be State freight, and ninety per cent, approximately, interstate freight?

A. No sir, I think there would be a little more than ten
1678 per cent State freight, and a little less than 90 per cent interstate freight.

Q. And it is that slight increase of the per cent of State or interstate freight carried upon local freight trains, as compared with the relation existing between the two classes of freight, and making up the total volume of traffic, that causes the increased expense of ten to twenty-five per cent in the doing of the State business?

A. Yes sir, in my opinion.

Q. Have you made any calculation as to what would be the increased expense of handling the average ton of freight per mile on local freight trains, as compared with the expense of handling the average ton of freight per mile on through freight trains?

A. No sir.

Q. Have you any opinion which you care to give upon that proposition?

A. If I gave one, it would be only in the most general way. I would say, roughly speaking, it would cost three times as much to handle business on the local trains as on the through trains.

Q. If it were true that all of the State freight business was handled upon local freight trains, and all of the interstate freight business was handled upon through freight trains, then you would say the cost of handling the average ton of State freight would be three times the cost of handling the average ton of interstate freight?

A. Yes sir, roughly speaking, I would say that actual cost would be three times as much, under those circumstances. Even
1679 then, I do not think it would be three times as great in proportion to revenue.

Q. You are speaking of ton miles?

A. Yes sir.

Q. If it were in proportion to revenue, there would be three times as great expense, and two times as great earnings?

A. Yes sir.

Q. Take the proposition in reference to the Burlington road; you say you know the freight divisions?

A. I said I know such testimony as has been given in this case.

Q. They go from Kansas City to Brookfield, Brookfield to Hannibal, and Hannibal to St. Louis?

A. I believe Cameron is a local freight division.

Q. Is it your idea, from your knowledge of railroad and industrial conditions, that the people in the State of Missouri, living beyond a freight division, would buy at some of the commercial centres in Missouri, say Kansas City, St. Joe, Hannibal or St. Louis?

A. Very largely, undoubtedly.

Q. And ship there produce to these commercial centres?

A. Yes sir.

Q. And whenever shipments from or to these commercial centres went beyond one division, you would put those on what trains?

A. On the through train to the division point, and then on the

local train. There would be no distinction made between
1680 local and interstate freight. In the case you speak of it would be State freight handled upon an interstate through freight train.

Q. It has been testified here that there was a large amount of business on the Burlington Road that originates in Missouri and goes out of Missouri. If that business originates between two division points how is that handled in proper operation?

A. It is handled on through trains between divisional points; if it comes from one division to another division.

Q. But in case it is between divisions?

A. Between divisions it is handled on local freight trains.

Q. Then does the existence of a larger number of divisions upon the Burlington than upon the Missouri Pacific affect in any way your opinion as to the proportions of State and interstate freight handled on local freight trains?

A. That they have more divisions? If their terminals were shorter they would be able to handle more of their freight on through trains.

Q. And there are more divisions on the Burlington than on the Missouri Pacific road?

A. I so understand.

Q. Take the distinction that has been offered by one witness as to these two classes of interstate freight; that is, freight passing clear through the State,—have you made any distinction in the case of the Missouri Pacific as to the percentage of the entire
1681 amount of tonnage of that class of freight?

A. Only for the three days October 1st, 2nd and 3rd. Our analysis for the whole month of October did not separate the interstate freight between what has been termed "through interstate," and the "second class" of interstate freight, because when we started that work, that distinction had not been raised. But in the three days' examination we did so separate the two classes.

Q. What division did you make from that actual examination?

A. We found that 36 per cent of the total ton miles was through interstate; and that 40 per cent was second class interstate.

The MASTER:

Q. What do you mean by second class interstate?

A. Freight which either originates or terminates within the State of Missouri.

Mr. HAGERMAN:

Q. What was the balance?

A. Pardon me, I would like to correct those figures. The through interstate was 37 per cent and the second class interstate 48 per cent, making total interstate 85 per cent; and 15 per cent was State freight. That makes the 100 per cent.

Q. Then instead of 60 per cent of the entire freight tonnage being first class interstate, you found it was 37 per cent?

A. On the Missouri Pacific in the three days covered by our examination, yes sir.

Q. Is that 37 per cent handled the entire tonnage or 37
1682 per cent of the interstate tonnage?

A. 37 per cent of the entire carload tonnage. I might state that in my opinion the percentage on the Burlington would be considerably less in the case of the Burlington than on the Missouri Pacific.

Q. Why?

A. Because the Burlington would not handle their through freight from Chicago, for instance, and other points, to Denver and other western points, through the State of Missouri. They would divert all that to their through lines up through Iowa, etc.

Mr. HAGERMAN: When you gave that 37, 48 and 15 per cent, was that the tonnage itself or ton miles?

A. Ton miles.

The MASTER:

Q. And as I understand, refers wholly to carload lots?

A. Yes sir, wholly to carload lots. I might state here, that our examination of the Missouri Pacific for the month of October, the analysis of the way bills for the entire month, shows that 93.56 per cent of the total ton miles is carload business. And less than carload business amounts to only 6.44 per cent of the ton miles.

Mr. HADLEY: Do you think that is a fair proportion of the carload and less than carload business as it would obtain over any period?

A. You mean for the month of October?

Q. Yes.

A. Yes, I should say it was fairly representative.

1683 Q. Then your idea is that of the entire freight traffic less than 7 per cent was less than carload lots?

A. I should think there would be less than 7 per cent over the entire year. If you take the tonnage handled, not ton miles, less than carload lots is 4.36 per cent. But on account of the less than carload business moving further on an average than carload business in the State of Missouri, the ton miles increases to 6.42 per cent of the total ton miles.

Q. Have you a map of the Burlington before you?

A. Yes sir.

Q. Take that map there and explain, if you please, so the Master can understand, the shipments that would go beyond the western border of the State of Missouri, and coming from beyond the eastern border of Missouri: How would that business in the natural course of operation be handled?

A. Through the State of Iowa. They would divert all the through business they could that way. Whereas the Missouri Pacific main line runs right through the State of Missouri. If they have any through interstate business for Kansas, they haul it through the State of Missouri. So where their per cent of the through interstate is 37 per cent of the total ton miles, I think it is probable

in the case of the Burlington it would be still less. Of course, when those figures we are now preparing in Chicago are completed, we will have those figures exactly for one month.

1684 Q. Would the fact that the Burlington has no through line running through the State of Kansas also affect your judgment on that proposition?

A. Yes sir.

Q. There would be a diversion going and coming, in order to go clear through the State of Missouri?

A. Yes sir.

Q. Does the topography of the Burlington in Iowa offer as good grades in the operation of through traffic, as Missouri?

A. I have ridden over the Burlington a good many times between Chicago and Denver, and I think it is better.

Q. You think it is leveler country?

A. Yes sir. I am speaking generally now and not as an engineer.

General HADLEY: I wish to offer in connection with the examination of this witness a statement in tabulated form which the witness has given in his testimony, of the tonnage of carload freight handled in Missouri by the Missouri Pacific Railroad Company on through and local trains, as the result of an examination of the way bills of October 1, 2 and 3rd, and the assignment of cars to local and through trains, based on information furnished by the Missouri Pacific Railroad Company.

(The paper referred to is marked Defendant's Exhibit 24.

Said paper is in the words and figures following, to-wit:)

1685 Q. Why didn't you take more than three days in the Missouri Pacific investigation?

A. On account of the volume of work. It was just a matter of the volume of the work.

Q. What was your idea of the proposition as to whether the operation of local freight trains could be largely, if not completely dispensed with, if the Burlington Railroad Company did no State freight business, assuming that would be a condition?

A. I do not think it would affect the operation of local freight trains in the least, because the local freight trains supply the local stations, and the local stations would have to buy just as much as they buy now. If they could not buy in the State they would go outside of the State and buy, and so the local freight trains would have to be operated to supply all these small stations.

Q. How about these different items of expense incident to the maintenance of stations, and station supplies, and incident to the maintenance of side tracks, warehouses and all of the 25 or 30 divisions of the expenses which have been introduced here, as to the manner in which the expense of operation and maintenance of equipment of the Burlington Railroad are kept: What is your idea, Mr. Ludlam, as to whether any of these items of expense could be done away with if the State freight business was eliminated?

A. I don't think they could, because there would still be the

same amount of business at each of the stations. If there
1686 wasn't any State business it would be interstate. If the merchant could not buy in Kansas City he would buy in Chicago. He would not stop buying goods or stop wearing clothes.

Q. Is it your idea that wherever there is a station from which there is interstate freight shipped or to which it is shipped, that necessitates the operation of a local freight train at that point; and the necessity for the maintenance of station, warehouse, sidetrack, etc., would still exist?

A. Yes sir, and even as it exists today it applies more to the interstate freight than it does to the State freight.

Q. Why?

A. Because the local trains and the through trains handle more interstate freight than they do State freight. And all of these stations have more interstate business than they have State business, speaking generally.

Q. That is, the excess percentage of the entire ton miles of freight handled is larger in the interstate than it is in the State?

A. Yes sir. 86 per cent of the total ton miles in the State of Missouri on the Missouri Pacific Railroad in the month of October was interstate freight, and I might say that of the ton miles to which I testified a few moments ago the less than carload ton miles amounted to 6.44 per cent of the total ton miles in Missouri. But of this 6.44 per cent ton miles of less than carload freight, less than two per cent, or 1.9 per cent is State less than carload, and
1687 4.55 per cent is interstate less than carload.

Q. Then what is your opinion, Mr. Ludlam, as to whether any larger proportion of any of these different items of expense incident to operation and maintenance of equipment should be assigned to the State freight business than to the interstate State business in proportion to the volume of the two traffics?

A. I have already testified that I thought there might be a little increased expense in handling State business as compared with interstate business. But I think the percentage of cost would be a little higher in the case of State business, that is, actual cost, than interstate business.

Q. Would that apply to maintenance of equipment or to the operation expenses?

A. To the conducting transportation expenses, principally. I do not think it would apply at all to the maintenance expense or to the general expenses, or if it did apply at all to the general expenses I should say the larger proportion should be assignable to the interstate freight.

Q. And your basis, I understand, or the basis of your theory that there is an increased expense of 10 to 25 per cent in handling the average ton mile of State as compared with the expense of handling the average ton mile of interstate freight is based upon the proposition that there is a larger per cent of the State freight handled upon local freight trains than the relation between the two classes
1688 of freight in the making up of the total?

A. Yes sir. For instance, although the total less than car-

load ton miles of interstate freight is much greater than the State freight, the proportion of the less than carload business is less in the interstate than in the State. That is, of the total interstate business, the less than carload amounts to only approximately five per cent of the business; whereas of the total State ton miles the less than carload amounts to something like 12 per cent of the total.

Q. Interstate?

A. No sir, I mean less than carload ton miles amounts to about five per cent in the case of the interstate and about 12 per cent in the case of the State.

Q. What is necessary, Mr. Ludlam, in order to make it a mathematical demonstration, as to the relative expense of handling the average ton mile of State freight as compared with the handling of the average ton mile of interstate freight?

A. I would hesitate to say what would be necessary to make it an absolute mathematical certainty. Of course, you could arrive at a pretty close approximation if you had absolute knowledge of the tonnage, divided between the different classes, handled by the different trains; and also the total tonnage handled by the company during the same period.

1689 Q. Let me see if I understand you. If it was known that the Burlington Railroad during the year 1905 handled for instance one hundred thousand ton miles of freight, State and interstate; and that 10 per cent of that was State and 90 per cent interstate; and then it was known how much of the interstate was handled upon through freight trains and how much of the State freight was handled upon through freight trains, then could you arrive at a definite division of the expense of handling the two classes of freight?

A. You could arrive at a very close approximation, but to arrive at it definitely you would have to enter into most minute details: the number of times each train was switched and the number of miles hauled, etc.

Q. Would that be as definite as the calculations of the ordinary division of expense between freight and passenger?

A. It would be a very good basis.

Q. And if the State and interstate freight handled by the two different classes of freight trains bore the same relation to each other in percentages that the two classes of freight bore to each other in the making up of the tonnage, then your conclusion as to the expense of handling it was what?

A. So far as actual handling went, they would be the same. There might be some other items of expense to be considered.

Questions by Mr. LADD:

Q. When you were examined at Kansas City you testified
1690 in connection with an exhibit which had been prepared by you and offered then as Exhibit Number 16, which made a partial showing of business for the month of October on the Missouri Pacific railroad: Assuming that the State freight earnings of the Burling- were $1,649,665.75, as shown by the Burling- Exhibit

Number 1; and that the interstate freight earnings were $6,735,-454.71; as shown on Exhibit 1 (I refer now to the earnings for the year 1905), and that similar conditions prevailed on the Burlington as those on the Missouri Pacific Railroad, if you divided up into interstate and State carload and less than carload lots, both kinds of business, the business of the Burlington for the year 1905, and assuming that the revenue per ton mile was the same, have you made an estimate as shown by a table which you have prepared, of the net earnings of the Burlington for that year in the State of Missouri?

A. On the assumption that it would cost twice as much to do the State carload business as to do the interstate carload business, and that it would cost 3, 5 and 7 times as much per ton mile to do the less than carload business as it costs to do the interstate carload business, yes sir.

Mr. HAGERMAN:

Q. Is that statement gotten up assuming conditions to be as in Exhibit 16?

A. Yes sir, exactly the same.

Mr. LADD:

Q. Upon the theory or assumption, that the State carload business costs twice, and the less than carload business costs three times as much per ton mile as the interstate carload business, what would have been the net earnings for the Burlington Railroad for
1691 the year 1905, on the State business?

A. $873,574.76.

Q. Assuming that the State carload business costs twice, and the less than carload business five times as much per ton mile as the interstate carload business, what would have been their net earnings?

A. $855,048.51.

Q. And again, assuming that the State carload business costs twice, and all less than carload business costs seven times as much, what is the result as to the net earnings?

A. $838,487.16.

Q. Mr. Ludlam, in dealing in this paper with the matter of operating expenses, what figures do you take as operating expenses of the Burlington for that year, for doing business in Missouri?

A. The total operating expenses as shown by Exhibit 6, which does not include taxes or rentals or replacement fund charges.

Q. What is that figure?

A. $4,678,346.90.

Q. Those are the operating expenses as shown by Exhibit 6 taken from the Burlington books, already in evidence?

A. Yes sir, applicable to the freight business in the State of Missouri.

Q. But that does not include replacement funds of 917
1692 odd thousand dollars, or taxes, or what are called rentals?

A. No sir.

Mr. LADD: I will offer in evidence this statement.

(The paper referred to is marked Defendant's Exhibit 25. Said paper is in the words and figures following, to-wit:)

1693 Judge SPENCER:

Q. Did you make any computation including the items you have omitted in this statement?

A. No sir.

Mr. LADD:

Q. Do you remember the exact amount as it has been stated here, of that replacement charge?

A. No sir. As I recall it, it is 917 thousand and some odd dollars.

Q. The replacement account for 1905 amounting to $917,418.75 is not included in the figures for operating expenses with which you dealt in preparing this statement?

A. No sir.

Q. Suppose they were included, what effect would it have upon those net results? Have you figured that out?

A. I think I can give you some figures upon it in a minute.

Q. Very well.

A. The item $917,418.75 amounts to approximately 19 per cent of the total freight operating expense for the year 1905 of $4,673,346.90. Therefore, if all of the $917,418.75 was applied against the freight expense of the year 1905 the expense would be increased approximately 20 per cent. This would reduce the net earnings for the State business, shown by the exhibit, approximately $150,000 in the computation, which is based upon the State carload business costing twice, and the less than carload business costing three times as much per ton per mile as the interstate carload business;

1694 and approximately $155,000 in the proposition of the State carload business costing twice, and all less than carload business costing five times as much as the interstate carload business. And approximately $160,000 in the case of the assumption that the State carload business costs twice, and all less than carload business seven times as much per ton per mile as the interstate carload business.

Q. That result is reached by charging the entire $917,000 to freight operating expenses?

A. Yes sir.

Q. What proportion of that should be fairly charged to freight and what proportion to the other classes of business?

A. It would be pretty hard to say what proportion of the item of $550,000, which is included in the item of $917,418.75, reserved for rebuilding the Kansas City bridge, is applicable to the freight, and what proportion is applicable to the passenger business. It might be done upon the experience of two or three years, on a revenue train mileage basis.

Q. Suppose the division was arbitrarily made, Mr. Ludlam, on the basis of earnings. The total freight earnings for that year, according to their statement, was $8,385,120.44 and total $12,584,607.64.

A. Then there would be about two-thirds apportionable to the freight business; about two-thirds of the $917,418.75.

1695 Q. Suppose the rental, two-thirds, was apportioned, what would be the effect on these figures you have given, as to net results? How much would they be reduced?

A. They would be reduced approximately $100,000.

Q. In all three cases?

A. Yes sir. In each one of the three cases.

Q. The statement you have just handed in has been made up upon the basis that all of the operating expenses are increased in the various proportions mentioned, the entire operating expenses: Now, have you prepared a statement made up on the basis of increase in the expense of conducting transportation, solely?

A. Yes sir.

Mr. HAGERMAN:

Q. Let me understand. In statement Exhibit 25 you included everything as expense, except replacement fund, taxes and rental: Now, this Exhibit 26, will simply treat "Conducting transportation" as what?

Mr. LADD: Increased expense. On the theory that the increased expense is confined solely to conducting transportation.

Mr. LADD:

Q. Where did you get your figures for the expense of conducting transportation, which is involved in this statement?

A. From Exhibit 6.

Q. What did that amount to?

A. Conducting transportation chargeable to the freight business as shown by Exhibit 6, for the calendar year 1905 amounted to $2,686,870.67 out of a total freight operating expense of

1693 $4,678,346.90 or 57.43 per cent of the total freight operating expenses as shown by Exhibit 6.

The MASTER:

Q. What is Exhibit 26 intended to show?

Mr. LADD: It is intended to show what the net earnings of the Burlington would have been, on the assumption that it costs twice as much per ton per mile for the item of "conducting transportation" of State business, as other business.

Mr. HAGERMAN: And assuming the same conditions that are set forth in Exhibit 16, applied to the Burlington Road?

Mr. LADD: Exactly.

Mr. HAGERMAN: Since we are on the subject, as I understand it, if your Honor please, the statement introduced here before, stated as operating expenses everything except the $917,000 replacement fund, taxes and rentals. Now, this statement, Exhibit 26, is upon the basis of confining operating expenses, so far as increased cost is concerned, to the cost of conducting transportation.

Mr. LADD:

Q. Freight operating expenses, as dealt with by you in this statement, are the same as shown in Exhibit 6?

A. Yes sir.

Q. Excluding rentals, taxes and replacement fund?

A. Yes sir, and reserving other replacement fund.

Q. And the table you are about to offer is upon the theory that the cost of State carload business, the cost of merely conducting the transportation, that item or part of the total operating ex-
1697 pense, is twice as much on State carload as upon all other carload business, and three times as much on all less than carload business as the interstate carload business. Upon that theory what would be the net profit, if any, upon the State business for that year?

A. The statement also covers some further calculations, which I will explain later. Upon the assumption that the conducting transportation portion of the operating expenses cost twice as much for State carload business, and three times as much for all less than carload business, as conducting transportation expense of the interstate carload business; and that maintenance of way and structures, and maintenance of equipment, and general expenses, are the same on all classes of freight, per ton per mile, the result would be for the year 1905, that the Burlington railroad realized $1,010,042.14 from its State business.

Assuming that the conducting transportation proportion of the operating expenses cost double for State carload business and five times on all less than carload business, the cost of the interstate carload business, the result would be—the earnings for the year 1905 would be $993,855.06.

Assuming that the conducting transportation portion of the expense was twice as much in the case of State carload business, and seven times as much in the case of all less than carload business, as the conducting transportation cost of the interstate carload business, all the other operating expenses being the same per ton per
1698 mile, the net profits from the State business for 1905 would have been $978,744.

And then we go further and show in the last column, for the purpose of meeting some of the testimony that has been given in this case, what the result would be on the assumption that the conducting transportation portion of the operating expenses was five times as much in the case of State carload business as in the case of interstate carload business and 15 times as much in the case of less than carload business as in the case of interstate carload business, which gives us a result from the State business of the Burlington road for the year 1905 of $537,763.02 net earnings.

Mr. LADD: I will offer in evidence this statement.

(The paper referred to is marked Defendant's Exhibit 26. Said paper is in the words and figures following, to-wit:)

Mr. LADD: I offer in evidence paper marked Defendant's Exhibit 27.

Mr. HAGERMAN: I understand that is the same as exhibit 16, except it is made for the whole month.

A. Yes sir, on all the business. I wish to ask permission to put a heading on this paper showing what it is.

The MASTER: Exhibit 27 is offered but permission is given to counsel or witness to substitute a typewritten copy of same
1699 and to furnish other copies to the Master and counsel.

Mr. LADD: At Kansas City there was introduced in connection with your testimony a paper showing the results of your examination of the Missouri Pacific Railroad Company's records and way bills for the month of October, 1905, which covered the freight received at certain stations on that railroad. Have you since that time made an examination which covers the freight received at all the stations on the railroad in which Missouri had any interest?

A. Yes sir. We have continued the same examination that was partially represented by Exhibit 16 and completed it for the entire month of October.

Q. It covers all freight received at all stations on the Missouri Pacific system, which touched Missouri at all?

A. Yes sir, or delivered to connecting lines.

Mr. LADD: I offer in evidence this paper as Exhibit 27.

Exhibit 27 is in the words and figures following, to-wit:

Mr. HAGERMAN: The first statement dealt with freight received only?

A. I don't think at that time we had taken up the delivery to other roads. Now, we have included all that. All received freight which includes every particle of freight handled by the Missouri Pacific Railroad in the month of October, that touched Missouri.

Mr. HAGERMAN:

1700 Q. Whether it came in or passed through or went out?

A. Yes sir.

Q. Whether it was shipped from or was received?

A. Yes sir.

Q. Overhead freight, what you call passing clear through the State without stopping: Isn't that included?

A. Yes sir, all freight, every pound of freight represented by the way bills received in the month of October.

Mr. LADD:

Q. You went to the receiving stations or the books, which showed the freight received at every station on the system, as I understand, and shipped out from them the freight which had touched Missouri at all?

A. Yes sir.

Q. This statement, Exhibit 27, covers that freight?

A. Yes sir.

The usual hour having arrived recess was here taken until two o'clock P. M.

After recess on Tuesday, December 11th, the following proceedings were had.

Cross-examination.

By Mr. FRANK HAGERMAN:

Q. Haskins & Sells are public accountants?
A. Certified public accountants, yes sir.
Q. And their work is not confined to railroad work but they are engaged in a general accounting business?
1701 A. Yes sir.
Q. And it extends over all character and classes of business that requires the examination of accounts?
A. Yes sir.
Q. With that firm you have been connected how long?
A. Something over eleven years.
Q. And during that time what portion of the work have you been doing?
A. Well, I think I have had a part in most of the different characters of work that the firm has transacted.
Q. Where has been your headquarters in that eleven years?
A. Part of the time in New York and part of the time in the city of Chicago and for the last six years in the city of New York.
Q. I thought you said something about being away in the west one time for your health? Was that in the eleven years?
A. No sir, that was prior to my connection with the firm.
Q. The sum and substance of it is that during the eleven years you have been actually engaged in the actual work of the firm?
A. Yes sir.
Q. Your railroad work covers what period of time?
A. Personally?
Q. Yes sir.
1702 A. Well, about fourteen years. That includes two years I was employed by the Pullman Company at Chicago.
Q. And what was your position with the Pullman Company?
A. I started there as office boy and when I left there I was keeping the general capital stock records of the Pullman Company.
Q. What was your age when you left there?
A. Sixteen years.
Q. So your two years' experience with the Pullman Company was confined to the work of office boy and then keeping the stock account?
A. Yes sir.
Q. That was a very small matter, wasn't it, simply a boy's work?
A. Comparatively, no sir. I would hardly say that. I succeeded a man forty years old in keeping the stock record.
Q. How long were you engaged in keeping the stock record?
A. About eight months. And then my health gave out and I went west.
Q. You went to New Mexico?
A. Yes sir.
Q. Where was your employment there?
A. In about four months I went there. I was not able to work for about four months.

Q. You went out there on account of your health?
A. Yes sir.
Q. And in about four months after you got there you went to work for the Atlantic & Pacific Railroad Co. Albuquerque, N. M.
A. Yes sir.
1703 Q. How long did you work for the Atlantic & Pacific Railroad Company?
A. About three years.
Q. In what position?
A. In the auditor's office.
Q. You were not auditor?
A. No sir, I was bookkeeper in the auditor's office.
Q. How many employees were there there?
A. I think eighty employees in the auditor's office.
Q. How many men did you have under you?
A. None at first. Subsequently I had two, I think.
Q. But you were doing the ordinary accounting work, among those bookkeepers?
A. The ordinary bookkeeper's work, yes sir.
Q. When you left there what was your next experience so far as railroad work is concerned?
A. I went to the Colorado Midland.
Q. What year did you go to New Mexico ?
A. I will have to figure that.
Q. Well about?
A. 1881 or 1882.
Q. And you left there in 1884 or 1885?
A. In 1884 I think I left there, the last of 1884.
Q. When was your next position after that and where?
A. I went to the Colorado Midland as assistant general bookkeeper in the auditor's office.
Q. At what place?
A. Colorado Springs.
Q. How long did you remain there?
1704 A. I was with the Colorado Midland for about two years.
Q. That brings you up to 1886 or 1887?
A. Yes sir.
Q. From there where did you go?
A. I was there possibly two and a half years.
Q. You left there in 1888?
A. Yes sir. I occupied during that time different positions in the auditor's office.
Q. But—all the different positions in the auditor's office?
A. Yes sir.
Q. I will be glad to have you specify as you go along, or perhaps you can deal with it in one general term—so far as general railroad operations are concerned, you never had any experience as an operator?
A. No sir.
Q. You never worked in the operating department?
A. No sir.

Q. Your railroad experience has been confined to working in the auditor's office and in the accounting department?

A. Yes sir, in the general experience.

Q. Let us go along from 1888, what was your next experience?

A. I left the railroad company to accept a position with Mr. Haggerman of Colorado Springs, and I was with him for several years.

1705 Q. Was he building or operating some railroad?

A. Yes sir.

Q. Down in New Mexico?

A. Yes sir.

Q. They were just small affairs, weren't they?

A. Yes sir.

Q. What was your position with him?

A. I was with him for some years as auditor and accounting officer——

Q. One of several, or in charge of his department?

A. Having charge of his department.

Q. How many miles of road did he have?

A. At the time I went he had only a few miles, he was building; subsequently the system was extended to about 160 miles.

Q. Were they construction accounts or operating accounts you had charge of?

A. To start with, construction accounts.

Q. That was so during most of the time?

A. Subsequently I went down to New Mexico as auditor of that road.

Q. How long did that continue?

A. I was auditor for two or three years.

Q. And from there where did you go?

A. To Haskins and Sells.

Q. That covers, in a general way, your railroad experience?

A. Yes sir.

1706 Q. And your ability to speak as an expert upon the various questions where you have spoken, comes from your experience in what you have learned in the accounting departments as you were doing your work from time to time?

A. Yes sir, in a general sense. In addition to that, as public accountants we have made examinations of different features of railroad work. We are frequently employed by bankers and others to make specific examinations.

Q. I am speaking of your specific work under Haskins and Sells?

A. I do a great deal of that and virtually have charge of it.

Q. That is, the examination of accounts?

A. Its various features. We are constantly requested to make examinations and reports to railroad companies.

Q. What I want to get at, in as brief a way as I can, is what there is out of the accounting part of such railroad that bears upon the question of your qualification as an expert to speak upon the various subjects upon which you have spoken? Anything more than you have given me?

A. My qualification to speak in that respect would result entirely from my experience in connection with accounting matters of railroad companies. But I may say that all the results of railroad operations are summarized in the accounting office.

Q. That about expresses the idea, doesn't it?

A. Yes sir.

Q. Take the Burlington, for instance, how familiar are
1707 you with its location, the location of the towns it goes through, the kinds of road it had got, and so forth?

A. Only in the most general way.

Q. Have you ever been over the road at all?

A. Not in detail at all. I have been over certain portions, but not all of it. I have been over it from Chicago to Denver several times.

Q. Only as a passenger?

A. That is all.

Q. What other points?

A. St. Louis and Kansas City.

Q. Any others?

A. Chicago and Kansas City.

Q. Chicago and Kansas City, Chicago and Denver, Kansas City and St. Louis?

A. Yes sir, and I think I took a trip from Kansas City to Denver once.

Q. Most of those trips, especially between Kansas City and Chicago and Kansas City and St. Louis, were in the night time?

A. Yes sir.

Q. So far as any examination of the physical property, you have never made any?

A. No sir, I have never attempted any and would not be qualified to speak regarding that.

Q. Outside of the statement that was furnished here by Mr. Sturgis in his examination, you do not know anything about the number of miles of road, even, do you?

1708 A. And the statement of Mr. Fisher. Taking those two statements together with the testimony would cover all the information I have.

Q. I suppose it would be fair to say, so far as any special knowledge in reference to the Burlington Railroad is concerned, so as to enable you to speak with any intelligence in reference to it, you are dependent entirely upon the statements of those two men, Mr. Sturgis and the State expert, Mr. Fisher?

A. And the general railroad maps I have seen of the property.

Q. Have you done any examination of the accounts of the Burlington Railroad at all?

A. No sir.

Q. None at all?

A. No sir. But my firm is now engaged in connection with the work which your auditor is doing, of tabulating the way bills. So undoubtedly I am a little connected with that.

Q. That is to say, they are engaged now in going through the

way bills for September, 1906, for the purpose of preparing certain data to present certain theories?

A. Yes sir.

Q. So far you have not seen any of the figures and know nothing about the work that has been done?

A. Only from the reports that have been made by our representative who is at the office of the company.

Q. That is the report of the work that is done from time to time?

1709 A. The result has not been tabulated yet.

Q. What I am trying to get at, if any of the accounts involved in that examination have come to your personal attention?

A. No sir, except such things where a man has reported, where he said he noticed such and such was the case in handling a certain class of freight, or something of that kind.

Mr. LADD: The paper that has been prepared covering the Missouri Pacific business and which is to be put in typewriting and filed afterwards, I think I said, and I so understood, that that covered all freight received at all stations on the Missouri Pacific system which had touched Missouri. I am informed that it covers all freight whatever handled by the Missouri Pacific Railroad in Missouri, whether received at stations or shipped from stations. The other one was only freight received, and this covers the whole thing, and I so understood.

Mr. HAGERMAN: Mr. Ludlam, turn to your Exhibit 16, that, as I understand, is a statement which you have prepared from the books and papers of the Missouri Pacific Railroad Company showing certain results as to freight received during the month of October, 1905, at St. Louis, Missouri, at Kansas City, Missouri, Kansas City, Grand Avenue, Missouri, Leavenworth, Kansas, Atchison, Kansas, St. Joseph Missouri, Omaha, Nebraska, and South Omaha, Nebraska, all points on the main line between St. Louis, Missouri, and Kansas City, Missouri, and all points between Kansas City, Missouri,

1710 and Atchison, Kansas: Is that right?

A. Yes sir.

Q. That simply represents the statement of the freight received at those particular points?

A. Yes sir, that statement does: The amended statement, which is to take the place of that, covers all points.

Q. What is the number of the amended statement?

A. Number 27.

Q. Since then you have prepared as Exhibit 27 a statement upon the same basis, covering upon the Missouri Pacific Railroad for the month of October, all freight, of all character and kind, handled in the State of Missouri upon the Missouri Pacific Railroad?

A. Yes sir. This statement, Exhibit 27, is merely a continuation and completion of Exhibit 16.

Q. Did you personally prepare this Exhibit 16?

A. No sir.

Q. Did you prepare Exhibit 27?
A. No sir.
Q. From what data did you prepare Exhibit 16?
A. Exhibit 16 was prepared from the way bills of the Missouri Pacific.
Q. By whom?
A. By the employees of my firm.
Q. You saw none of the way bills and you saw none of the books or papers, did you?
A. No sir.

1711 Q. But certain subordinates of yours went into the Missouri Pacific office and tabulated and brought to you the result of the tabulations, from which you made calculations resulting in Exhibit 16?
A. Our employees made that examination.
Q. Did you make those tabulations yourself?
A. No sir.
Q. Who made it?
A. Our representatives, our employees.
Q. Who are they?
A. The men we had working on this piece of work. We had several. I don't know that I could tell you their names.
Q. As I understand it, you never saw a book or paper of the Missouri Pacific Railroad Company?
A. No sir, I don't think I ever did.
Q. You never made a single one of the calculations from the tabulations that were furnished by these employees?
A. I don't think I did. I may have made a few of them but not many.
Q. None you can recall?
A. No sir, I think not.
Q. Can you tell me who made up the statement that is marked number 16?
A. Our Mr. Taliaferro had direct charge of this engagement. We had a number of men working on the matter and certain men worked on different features of it.
Q. But so far as you are concerned you don't know personally whether it is correct or not?
A. Oh, yes, I do.

1712 Q. How do you know?
A. I know all our work is correct. We train our men to do correct work and we do correct work.
Q. Upon the sense I would say that my office help couldn't make a mistake?
A. No sir, I imagine our accountants and assistant accountants are all of a very different character of employees from what you mean when you say "office help."
Q. I will take that back and will not try to compare my office help with yours. But so far as you are personally concerned you do not know anything as to the correctness of these exhibits but your reliance upon your subordinates doing their work properly?

A. Yes sir, my confidence in our subordinates and the training and experience they have had.

Q. How many employees did you have upon this Missouri Pacific work?

A. We have had a different number at different times. I think we have had as high as seven or eight at one time and we started with one or two.

Q. Where were those employees obtained?

A. Mr. Taliaferro, who has had direct charge of it, has been in our employ, as he testified here, for a long time. He is what we call one of our permanent men.

Q. Mr. Taliaferro was the man from your own office?

A. Yes sir.

Q. And he is included in the one or two or seven or eight you mentioned?

1713 A. Yes sir, he had direct personal charge and gives it his attention.

Q. Outside of Mr. Taliaferro who were these employees?

A. J. D. Buckingham.

Q. Is he from your office?

A. Oh yes, he has been attached to our staff for seven or eight years and has made many bank examinations and other examinations for us.

Q. Who else?

A. H. S. Gilliam.

Q. Is Mr. Gilliam attached to your office?

A. Oh, yes, and for a long time.

Q. To make the matter short, how many were employees you picked up here in St. Louis and put on the work, who were not regular employees of Haskins and Sells?

A. I think one.

Q. Were all the rest regular employees?

A. I think they were.

Q. Regular salaried men of your concern?

A. Yes sir, regular salaried men. Mr. J. C. Oliver worked on it, who has been with us for years. R. H. Hudson worked on it, who has been with us for years.

Q. I do not care to go into the detail of it, but the point I was trying to get at was, how many were men you picked up and how many were your regular employees?

A. Only one was a man we employed, and I would hardly say he was picked up. He was employed after very careful examination as to his capability.

1714 Q. I notice in one of these statements that the document represents roughly about 90 per cent of State business and about 50 per cent of Missouri inter-state business: Do you know upon what that statement was made?

A. That was our best judgment of the proportion of the work that had been covered. That resulted from conference with all the men that had been engaged on the work.

Q. In other words, it was a rough estimate?

A. It was a little more than a rough estimate. It was as close an estimate as we could make.

Q. Did this statement include through business that starts outside of Missouri and goes through, beyond the limits of the State?

A. Yes sir, it includes some of it.

Q. I presumed, from this being a statement of the earnings of freight received at certain stations, that freight that went through without stopping was not included?

A. Probably a part of it was not. A very small part was. That is in Kansas. All the freight received there in the month of October, all freight received at Omaha and South Omaha. I dare-say some of that freight originated east of the State of Missouri, though a certain proportion of what you call through inter-state freight was included in this statement.

Q. That is to say, through inter-state freight that would start somewhere east of the Mississippi River and land at Atchison, Kansas, or Omaha, Nebraska, would be included in this statement, because that freight was received at those particular points?

1715 A. Yes sir.

Q. But freight that would start east of the Mississippi River and get west of the river, and not stop at one of those stations mentioned here, was not included in this statement?

A. No sir.

Q. In this statement how did you treat this class of freight that started in Missouri and ran out into Kansas and came back into Missouri?

A. As inter-state freight.

Q. You called that inter-state freight?

A. Yes sir.

Q. That is illustrated, for instance, by freight which would start from Kansas City, Missouri, run up through Atchison or Leavenworth, and get over back into Missouri at St. Joseph: You treated that all as inter-state freight as distinguished from State freight?

A. Yes sir. It was our understanding that if freight went out of the State en route, even if it terminated in the same State in which it originated, it was inter-state freight.

Q. Live-stock that originated in Missouri and came into the stock-yards at Kansas City: How did you treat that? Did you treat that as State or inter-state freight?

A. In Exhibit 15, that was erroneously included as State freight.

Q. You called that State freight?

A. In Exhibit 27 that has been changed and put into inter-state freight.

Q. In other words, when you prepared Exhibit 15, you

1716 treated that as State freight?

A. Yes sir.

Q. Afterwards you heard some question raised upon the trial, as to whether it was State or inter-state freight, and when you made up the last statement you treated it as inter-state freight?

A. No sir, we raised the question after a hearing, and decided it should be classed as inter-state freight.

Q. Upon what ground did you decide that was inter-state freight as distinguished from State freight?

A. That it was through freight. That is, it did not originate in the State of Missouri.

Q. I am talking about freight, for instance, that originated at Warrensburg, Missouri, from any place between Kansas City and St. Louis, and came to the Kansas City stockyards. You say that originally you classed that as State freight but when you came to make the corrected statement you called it inter-state freight: Is that right?

A. Yes sir.

Q. My question is, why, as to that class of freight, did you undertake to change your original tabulation and call it inter-state?

A. We sent a representative to Kansas City to look into the situation of the stockyards at Kansas City, and as a result of his investigation we concluded that all of the cattle business into and out of Kansas City was inter-state business.

Q. Although it started in Missouri?

A. I don't think it started in Missouri. Mr. Taliaferro
1717 can tell you as to that detail.

Q. What I am talking about is, although the shipment originated in Missouri and was sent to Kansas City, after your investigation you concluded that, regardless of everything else, all that kind of traffic ought to be treated as inter-state?

A. My understanding is that Mr. Taliaferro changed those figures and put all live-stock into and out of Kansas City in Exhibit 27, into the inter-state business.

Q. I am trying to find out what you know, if anything, about it.

A. I do not know positively as to how that freight shipment you speak of is treated.

Q. I am using that only as an illustration, trying to deal with the question of all live-stock that originates in Missouri and goes to Kansas City stockyards.

A. My understanding is that in this Exhibit 16 it is shown as State freight, and in Exhibit 27 it is shown as inter-state freight.

Q. Did your informant, or whoever gave you the information about the stockyards at Kansas City, that made you change your mind, show you that the company's plant was made up of pens, regardless of the State line, but there is the exceptional circumstance that the State line goes practically through the center of the plant?

A. No sir, that was decided upon by Mr. Taliaferro.

Q. You do not know about the construction there?

A. Except the result after careful inspection.

1718 Q. What did you do about stock that came from Kansas City? Did you treat that as inter-state, so Missouri got part of it?

A. My understanding is that all live-stock coming into or out of Kansas City is treated as inter-state.

Q. No matter where it came from?

A. If it went to Missouri from Kansas it was treated as inter-state.

Q. The very question I am asking you, and I simply want to get the basis upon which you got up your statement. The Kansas City stockyards is a great plant with a large number of pens, and the State line runs right through the pens: You would not know when you were down there where the State line was, would you?

A. I so understand.

Q. The live-stock that comes from the State of Missouri into those yards, you say in this corrected statement is treated as inter-state commerce?

A. I said that my understanding is that all live-stock coming into and out of Kansas City on the Missouri Pacific Railroad statement is treated as inter-state business.

Q. What I am asking about is, suppose it comes from Kansas to the stockyards, how do you treat it, as coming to Kansas City, Kansas, or Kansas City, Missouri?

A. My understanding is that is treated as coming from Kansas City, Kansas.

Q. So that does not go into the statement at all?

A. No sir.

1719 Q. This statement is made up upon the basis that if the live-stock starts from Missouri to the stockyards it is treated as coming to Kansas City; but if it starts from Kansas it is treated as starting and ending in Kansas, so far as your statement is concerned?

A. That is my understanding.

Q. In making that decision did you lend any force to the idea that all the tracks which the Missouri Pacific Railroad Company has leading into the stockyards are upon the Missouri side of the line?

A. No sir.

Q. You did not know anything about that?

A. We did not lend any consideration to it.

Q. Did you find out the fact?

A. Where the tracks were located would have nothing to do with the earnings per ton per mile. This statement is a statement of the tonnage carried and the earnings derived therefrom.

Q. Yes, but the whole statement is bottomed upon the division between State and inter-state freight?

A. Yes sir.

Q. Now, then, in deciding that this was State or inter-state freight, you state that the question of the location of the tracks cuts no figure whatsoever?

A. It was a question of the destination of the commodity that we considered rather than the tracks over which it ran.

Q. How did you arrive at the number of tons per mile which were carried? How was the statement made up, if you know?

1720 The tonnage carried was multiplied by the number of miles traveled.

Q. That is to say, you took your example in this way: You found out the number of tons of carload inter-state freight, for instance, that was carried?

A. Yes sir.

Q. And then you found out the number of miles it was carried in Missouri: Is that right?

A. The number of miles that specific freight was carried in Missouri, Yes sir.

Q. And by multiplying the two, you got the number of tons that was carried one mile?

A. Yes sir.

Q. And then you got the revenue that was received from all that stock, and then how did you get the revenue per ton per mile?

A. By dividing the number of tons one mile into the total revenue.

Q. The total revenue received for that class of freight?

A. Yes sir.

Q. When the shipment was an inter-state shipment, what you call first-class, going through the State without stopping, or starting out and running in the State; or starting in the State and running out, what we call the second-class inter-state freight, how did you make a division? On what basis so as to allow Missouri its proportion?

A. On inter-state freight, revenue was allowed Missouri on a mileage basis, the mileage shown in the Missouri Pacific
1721 official distance tables being used.

The MASTER: Track mileage?

A. Yes sir.

Mr. HAGERMAN:

Q. That is the way you allotted the revenue?

A. Yes sir.

Q. And you allotted the number of miles in order to arrive at the number of tons per mile upon the basis of the actual number of miles carried in Missouri?

A. Yes sir.

Q. In making up this statement, or in getting this information, were any figures prepared upon a train mail basis?

A. I don't know that I quite understand the question.

Q. I suppose along this same line, accountants do find out how much per train mile is earned, don't they?

A. Yes sir.

Q. To ascertain that how would you go about it?

A. We did not make that up.

Q. How would you go about it, as an accountant?

A. You would have to get the revenue train mileage in the State of Missouri for this purpose.

Q. How would you get that?

A. You could not separate it between State and inter-state.

Q. Why not?

A. Without making a detailed analysis, of how the freight was hauled.

Q. It could be done. What I am trying to get at is how
1722 you would do it? You did not do it, as I understand, but how would you do it?

A. You would do it for the total earnings, by taking the total revenue train mileage in the State of Missouri and dividing it into the total revenue. That would give you the earnings per train mile. But I don't know that you could do that between State and inter-state. I doubt if the records of the company would make it possible. You would have to know the contents of each train that passed over the road.

Q. How would you do it if you wanted to ascertain how much per ton was earned?

A. State or inter-state?

Q. Both or either.

A. If you wanted to determine the earnings per ton mile, you mean?

Q. No sir, per ton. How much did they earn on each ton of freight handled?

A. We have done that on this statement?

Q. Where?

A. "Amounts received per ton," the column is headed. You divide the total number of tons into the total revenue.

Q. There is no difficulty about ascertaining it upon that basis?

A. No sir.

Q. Did you make any calculation or was any statement prepared, showing in these less than carload lots, how much freight went into a freight car?

1723 A. No sir.

Q. Or how much waste space there was?

A. No sir.

Q. Or how many cars were carried in a train?

A. No sir.

Q. That is to say, in making up the statement you put all the freight absolutely on a level, regardless of how it was handled?

A. No sir, we did not put it on a level, because we stated the amount of each class carried.

Q. You separated the carload and less than carload lots?

A. Yes sir.

Q. And you separated the State and inter-state?

A. Yes sir.

Q. But outside of that, it was all put upon a level, regardless of the kind of train that carried it, that is true isn't it?

A. Yes sir.

Q. Regardless of the amount of freight that went into a car: That is true, isn't it?

A. Yes sir.

Q. Regardless of the handling of the particular piece of freight?

A. Yes sir. Both as to State and inter-state.

Q. As to everything?

A. Yes sir, as to everything.

Q. That is the theory upon which your statement is gotten up?

1724 A. Yes sir.

The MASTER:

Q. You had no data. The way-bills themselves would not disclose whether a given commodity which was transported, was transported as part of a car-load or part of a lot less than carload, would it?

A. Well, you could tell from the way-bills whether it was a carload or not.

Q. If the way-bill called for a carload?

A. If it was less than carload you could not tell from the records how much freight went into that car. When I say you could not tell—I might qualify that by saying you could not practically determine. Of course it would be possible to get the train sheets and find out what cars were loaded in each train, and then go through every way-bill; the way-bills show the car number, and you could find out from the train sheets, what cars were carried in that train. But it would take a very long time to do that, and it is not practicable.

Mr. HAGERMAN:

Q. That is what I am getting at. It is not practicable, so far as railroad business is concerned, to attempt to ascertain from the books and papers which roads ordinarily keep, how a particular car was loaded, or how a particular shipment was handled, or how much waste space there was in the car that we carried that particular traffic. Is it practicable to do that?

A. No. sir. Of course except to this extent, that that waste space, and that lost space, applies almost exclusively to the less than carloads. Carloads, which represent ninety-six per cent of the total business, are loaded to their capacity, or have the minimum

1725 carload rate.

Q. That is true in generalizing. But there is a great deal of freight which fills a car absolutely, so far as the space is concerned, and the weight is far less than the weight capacity of the car?

A. Yes sir. And that pays the minimum carload rate.

Q. So after all, the ideal way, if you are going to figure it and try to get the actual cost of handling any particular commodity for any particular distance, would depend entirely upon the conditions of handling the particular traffic; so you ought to know the volume that was in a car, the kind of train it went on, how many cars were handled in the train, how much waste space there was, how near the commodity came to occupying the full size of the car, and everything of that kind: That would be the ideal way?

A. You would have to know more than that.

Q. What?

A. Whether it dropped a draw-head, or had a wreck, or a whole lot of things like that.

Q. Let us have some of the other things you would have to know.

A. What loss and damage claims resulted from that shipment, for instance. A lot of indefinite things.

Q. The character of the freight and the character of the service necessary in loading or unloading it, is an important element you would have to know about, isn't it?

A. Yes sir.

1726 Q. Tell us some of the other things you yould have to know about.

A. I would not want to be committed, that you could determine the cost, even under those circumstances.

Q. Well, you would come more accurately a good deal to getting the result?

A. If you refer to this Exhibit, it does not show any cost.

Q. Leaving your Exhibit out, I am speaking generally.

A. Undoubtedly there could be figures worked out that would come a good deal nearer showing all the dif-erent classes of business handled by the railroad, than anything that has so far been introduced in this case.

Q. The sum and substance of it is, that in railroading and accounting, as things go, without making preparation in advance it is impossible to figure it out?

A. Yes, for the reason you said, that no two cars carry the same -eight, the same class or the same commodity.

Q. And does the same engine always carry the same number of cars?

A. No sir, nor does the coal always make the same amount of steam.

Q. Let me take your statement Exhibit 16, in the light of these suggestions: You have reduced your statement down to the ton per mile?

A. Yes sir.

Q. The best you could do was to get a system of averages?

A. Yes sir.

1727 Q. That is to say, you could, with some degree of accuracy, get the carload freight?

A. Yes sir.

Q. And you could get the distance hauled?

A. Yes sir.

Q. And the number of tons hauled?

A. Yes sir, with almost exact accuracy.

Q. That reduces all carload freight, whether State or inter-state, practically to a level, by a system of averages?

A. Yes sir, per ton mile.

Q. How much variation is there in the carload lot, from twenty to eighty thousand pounds isn't it?

A. In the carload?

Q. Yes.

A. Yes sir. I should say something like that.

Q. When you say you get the figures as to carloads accurately, you mean you got what is regarded as carloads in railroad parlance,

and put all those together and got the number of miles run and the number of tons handled, and the revenue received?

A. Yes sir. You get the number of tons almost exactly, you know. Of course some places the minimum rate is shown instead of the number of tons.

Q. But what I mean is, you put them all practically—and you are bound practically to so deal with it—you put them all upon practically a level—every carload is assumed to be handled that way.

A. Pardon me, it is not quite true that it was assumed
1728 to be handled that way.

Q. Probably my language was inaccurate. But the result of your figures is, it was all reduced to a common level as if every shipment was handled just alike.

A. It is all reduced to a ton mile unit.

Q. And the ton mile unit puts it all upon a basis just the same as if every shipment had been made under like conditions and like circumstances: Isn't that true?

A. Yes sir. It is the number of tons one mile.

Q. And yet, as a matter of fact, it is safe to say that no two shipments are shipped under exactly the same conditions and circumstances?

A. Generally speaking that is true.

Q. And all this I have said applies both to the carload and less than carload lots as shown by this statement Exhibit 16?

A. Yes sir.

Q. Have you the inter-state memorandum on Exhibit 27? I would like to take that in this same connection.

A. Yes sir. (Handing counsel paper).

Q. What I have said as to Exhibit 16 is applicable to Exhibit 27, with the exception of the character of the statement?

A. Yes sir, with the exception of the difference in the figures.

Q. That is to say, Exhibit 27, instead of being limited to the freight received at certain stations, specified, attempts to cover all the freight that was handled in Missouri at all?

1729 A. Yes sir.

Q. All I have said, then, with the exception of the class of business that is covered, and with the exception of the figures changed, and that change as to the stockyards shipment, all we have said as to Exhibit 16 applies to Exhibit 27?

A. All I have said.

Q. I will take back the "we:" All you have said as to Exhibit 16 applies to Exhibit 27?

A. Yes sir.

Q. Have you before you Exhibit 17?

A. Yes.

Q. As I understand, Exhibit 17 is gotten up upon the basis or theory that the statement Exhibit 16 as applicable to the Missouri Pacific Railroad might be applied to the Burlington case: Or, rather, it applies these figures to Exhibit 16?

A. It shows what the result would be if they were applicable.

Q. That is a better statement of it. I see in this you figure out the statement of profit upon inter-state carload and less than carload, and State carload and less than carload, using as the unit of cost a ratio of 50 per cent of the revenue?

A. Derived from inter-state carload business.

Q. You assume that 50 per cent to start with, don't you?

A. Yes sir, that is an assumption.

Q. If you would assume it to be 100 per cent, what would be the result?

A. That you would lose money on all your inter-state business, and still make money on all your State business.

1730 Q. Let us see if that is so: Take 100 per cent upon the first item, inter-state carload, and assume it to be 100 instead of 50?

A. Yes sir.

Q. You would come out just even on the inter-state carload business, wouldn't you?

A. Yes sir.

Q. And upon the State carload where would you come? You would come out with a profit there?

A. Yes sir, a small profit. You would also come out with a small profit of inter-state less than carload on the ratio of three, and I think on the ratio of five; but on the ratio of seven I think you would lose money.

Q. Let us see if you would lose money at seven; that is the last item?

A. Yes sir.

Q. But the inter-state less than carload you would lose money on?

A. Yes sir.

Q. That would be very little. But on State less than carload you would make money?

A. You would lose considerably on the inter-state less than carload.

Q. At seven times?

A. Yes sir. It would cost you forty dollars.

Q. It would cost you forty?

A. Yes sir.

Q. But you would have to get it all on the seven times
1731 basis before you would lose money. I think you would lose a little at five but make something on the three.

A. Yes sir.

Q. Assume it down to 10 instead of 50 or 100, and where would you land?

A. You would land with an impossible operative ratio on your whole business.

Q. You would make lots of money on every class of business?

A. If you could operate for 10 per cent you would make lots of money on every class of business.

Q. If you assume it one per cent you would make still more, wouldn't you?

A. Yes sir.

Q. So you cannot take any figure upon that table, from 1 to 100 per cent, that the railroad company is not going to make money on

everything except inter-state less than carload lots, where you use a multiple of five and seven. Isn't that the practical result of that tabulation?

A. I would not say how high you could go before you would lose money on the inter-state, if it cost five times, on the less than carload lots I speak of. You can take any per cent you choose, but 50 per cent is a comparative railroad cost of op-ration.

Q. What I call your attention to is, I do not care what per cent you assume, from 1 to 100, but still according to these figures (indicating Exhibit 17) the railroad company must be making
1732 money on everything except in the two instances you have pointed out: Isn't that true?

A. They would not be making money at 100 per cent of the inter-state carload business.

Q. They would not be losing money under any possible contingency you can imagine?

A. No, sir, if it cost them anywhere from one to one hundred per cent of their earnings to operate, there would not be any loss, of course.

Q. I do not know how it strikes you, but it does not seem to me there is any possibility that such a thing could exist. But you may be right and I may be wrong. You have your carloads of interstate earnings on Missouri as 5.84 miles, and you estimate 50 per cent of the earnings to pay expenses, and that leaves you a profit?

A. May I state there that we put in two statements; one 50 and one 60 per cent, intending to cover the fluctuations which appear in the operation of railroads.

Q. I want to ask you some general questions about the 60 per cent before I get through, but I am simply trying to get your theory in making up these statements.

A. Yes sir.

Q. When you get to the State carload lots you use the multiple of two times the cost of doing the interstate carload business: By what authority or for what reason did you multiply the cost of doing the interstate carload lots, instead of the whole interstate business?

A. Because it would be contrary to my judgment of any possible variation in the cost, to attempt to state that the State car-
1733 load business would cost twice, or even anything like as much, as the interstate less than carload business would cost. In my judgment, while you cannot segregate the earnings of railroads, and no statements have been introduced in this case where the earnings are segregated sufficiently clearly to enable you to determine accurately the cost, you are much nearer getting the true figure when you separate the carloads and less than carload lots than when you limit it to interstate, which includes carloads and less than carload lots.

Q. This idea originates with you, about using as the subject of multiplication, the cost per ton of handling the interstate carload?

A. No, sir, I beg your pardon. I do not think it cost twice as much, and that is the reason for qualifying the statement by putting in the word "even" there.

Q. I was not trying to pick you up on any idea you are assuming, but I suppose you are preparing a statement to meet any views of the case?

A. I used the multiple of two because that has been used in the case.

Q. I understand the use of your multiple. But the figure you multiply is always the cost per ton per mile of the interstate carload freight?

A. Yes, sir.

Q. Why do you do that?

1734 A. Your operating ratio, your per cent of freight expense to freight earnings for the calendar year 1905 amounted to some 55 per cent. It has been testified to by many witnesses in this case, that your greatest per cent of profit was derived from your interstate carload business. If that is so, and your total operating expenses are 55 per cent of your revenue, then it is not misleading to say your percentage of cost of interstate carload business is 50 per cent. Or, if it is, this statement makes it glaring.

Q. Assuming that your multiple, as I assume you endeavor to do, is always used to meet the varying phases of the testimony, where witnesses said it was two, three, five and seven times the cost to do one kind of business than to do another kind, I understand that. But supposing you had taken the basis upon which the witnesses answered, that the cost of doing the State business, taking into consideration carload and less than carload lots, was two, three, five or seven times the cost of doing the interstate business, including both carload and less than carload business, what would be the result with these figures?

A. I have not prepared any such figures and I do not so construe the testimony.

Q. Take your interstate less than carload lots; you used there as the figure to be multiplied the cost per ton on the interstate carload, didn't you?

A. Yes, sir. Assuming that is 50 per cent——

Q. Supposing, even upon the State carload, you had used as the figure to be multiplied, the cost of all the interstate business

1735 per ton per mile, upon your assumption where would it have taken you? That is your first item. Can you give it to me roughly? I don't care about the details. But it would have made considerable difference in your figures, wouldn't it?

A. Not very much. Because the interstate ton mile amounts to 81 per cent of the less than carload handled 2.34. So the variation would have been very slight.

Q. Turn back to your Exhibit 16.

A. The earnings per ton per mile would be .63456.

Q. Instead of 7.584?

A. Yes, sir, approximately .635.

Q. So in each one of these cases if you used all of the interstate business as the test, the figure to be multiplied would be after all .634 instead of .584?

A. .317 instead of .392, if I used those figures. But I do not

want you to construe, from the fact I made these figures, that I would approve of such a matter.

Q. What I am trying to see is, where it would lead you to, your figures, assuming, I understand, what the witnesses have testified to.

A. It would not change it materially. You would be still making a great deal more out of your State than your interstate business.

Q. On Exhibit 16 you have it that the average interstate per ton per mile was what?

A. 63½ mills.

Q. And your average State business was what?

1736 A. 155½ mills.

Q. What difference would that make if you just made your calculation upon that basis? Your interstate business, disregarding carload and less than carload, you would earn how much?

A. If you got further away from the segregation than even this comes to and treat your interstate business as a whole, your earnings would be 6.35 mills; and if it cost you 50 per cent of that to operate, your operating would be 3.17 mills, leaving a profit of 3.18 mills.

Q. Now, then, let us take all the State business, without subdivision between carload and less than carload lots, and according to Exhibit 16 it is 1.55½?

A. It is 15½ mills. If all your State business, both carload and less than carload, cost three times as much per ton per mile as all of your interstate business, both carload and less than carload, and that it cost 50 per cent of the earnings per ton per mile from your interstate business to operate, and that it cost three times that per ton per mile on your State business to operate, your profit per ton per mile from your interstate business would be 3.18 mills; and your profit from your State business would be 5.69 mills.

Q. And yet you have a tabulation rendered here running up the profit on this State business from 24.77 to 36.45?

A. On a more accurate calculation according to my judg-

1737 ment than this.

General HADLEY: That was three times on State, you took, instead of twice?

A. Yes, sir, three times on all business.

Mr. HAGERMAN:

Q. Let us look at Exhibit 17 again. In the first item of the interstate carload, you assume that it costs 50 per cent of the earnings. Then you would come to interstate less than carloads, and use your multiple of three, you do not assume there 50 per cent of the earnings on less than carload business, but three times the cost of the carload lots?

A. Yes, sir.

Q. Do you think that is right, as a matter of figuring?

A. These figures were made in an effort to illustrate the opinion of the expert who had testified in this case.

Q. But I am asking you, do you think that is the right way to make up a statement, to fairly illustrate the situation?

A. To fairly illustrate the situation, yes, sir, I do.

Q. And to fairly illustrate the cost per ton per mile?

A. As testified to by the witnesses in this case. It is not my opinion of the cost. I have already testified as to that, I think.

Q. For what reason, again, I will ask you, do you take, in ascertaining the cost per ton per mile of doing the interstate less than carload business, as the basis, the cost per ton per mile of the interstate carload business?

A. Because it is my understanding of the testimony which has been given here, that that business cost from three to seven
1738 times as much as the through business.

Q. That is, you have again come to understand that that is the testimony?

A. That is my interpretation of the testimony?

Q. And this State less than carload lots, your interpretation of the testimony, and therefore the reason, and the only excuse, for making this tabulation, is, that in the State less than carload lots the testimony is that it costs three times the amount to do that business that it does to do the interstate carload business?

A. The testimony as I interpret it, Mr. Hagerman, was that business handled by the local or way trains cost from three to seven times as much to handle as the through freight business. Now, both State less than carload lots and interstate less than carload lots is largely handled by local or way trains. Therefore, I put those on the same basis as a proper consideration of my understanding of the testimony.

Q. I think the way you got that is, that is gotten up from your understanding of the testimony, and if your understanding is wrong the basis of your figures is wrong: That is the fair result of your test, isn't it?

A. If it was proven it cost only ten per cent or twenty-five per cent more to do State business than interstate business, then it would be wrong to make figures on the basis of twice the cost.

Q. I say, the reason you got it up in the form it is in
1739 Exhibit 17 is because that is your understanding of what the testimony was?

A. Yes, sir, and also to show that even on the enhanced cost of doing the State carload as compared with the interstate carload, and the enhanced cost of doing the State and interstate less than carload business, as compared with through business, is not incorrect testimony, you would still be making more per ton on State than on interstate business.

Q. And your reason for dividing the State carload and less than carload business has already been given?

A. Yes, sir.

Q. Exhibit 18 you practically duplicate Exhibit 17, except that you have assumed for the purposes of your statement a ratio of 60 instead of 50 per cent of the revenue, to be applied to operating expenses?

A. Yes, sir.

Q. So, all we have said up to Exhibit 17 will be applicable to

Exhibit 18, with the figures reduced accordingly, upon a 60 per cent basis instead of 50 per cent being assumed?

A. All I have said.

Q. Exhibit 19, which purports to be a statement showing the relative cost of doing freight and passenger business, on the Burlington Railroad in the State of Missouri, during the year 1905?

A. Yes, sir.

Q. Why did you take the year 1905?

1740 A. Because I thought that was representative of more normal conditions than in 1904, in Missouri, because during 1904 they held a World's Fair at St. Louis and the passenger situation was abnormal.

Q. I notice some other statements where you confine yourself to 1905. There is one other reason beside the one you suggest, that a large portion of the Kansas City bridge was charged out in 1905?

A. No, sir, because in all the figures we have used we have eliminated the charge for the Kansas City bridge, and have so stated. So it does not affect our figures.

Q. You have preferred, in dealing with Burlington figures, to use 1905 figures instead of 1904, because the World's Fair traffic may show a condition that is not normal?

A. Yes, sir, I thought 1905 was more representative.

Q. Have you this statement before you?

A. Yes.

Q. This statement is made up from Plaintiff's Exhibit 1?

A. The first figures are from Plaintiff's Exhibit 1.

Q. Which ones?

A. The eight million dollars and the three million dollars.

Q. How did you arrive at this apportionment of the miscellaneous earnings that you have made: For instance, you apportion to passenger earnings the mail earnings?

A. Yes, sir.

1741 Q. Is the amount of mail earnings taken from Exhibit 1?

A. No, sir, the amount of mail earnings is taken from an Exhibit which was put in by Mr. Sturgis in Kansas City, the last day he was on the stand. I cannot give you the number.

Q. It was one Mr. Fisher called for. What I am getting at is, the mail earnings are included in miscellaneous earnings?

A. That is one of the items included.

Q. Upon what basis, your own judgment, or what else, do you classify mail earnings as passenger earnings, in this statement?

A. I might say that all of those miscellaneous earnings were apportioned in accordance with my best judgment, and in some cases somewhat arbitrarily for the purpose of arriving at an approximate figure. In the case of the mail earnings, the Interstate Commerce Commission classify that as passenger earnings in its report, and I have classified them as passenger earnings here. The same is true of express earnings.

Q. That is to say, the classification and division, where you have made a division, has been just the exercise of an arbitrary judgment, you might say?

A. Yes, sir, very largely.

Q. Based upon just what you think, taking the situation as a whole, would be right?

A. Where I had authority I based it also upon authority.

1742 Q. You think your authority for the mail earnings is that the Interstate Commerce Commission classifies it that way?

A. Yes, sir.

Q. And also the express?

A. For the reason that mail and express earnings are derived from passenger business. And the apportionment of expenses in handling mail and express business are included in the passenger expenses.

Q. Outside of that authority you find from the method of putting it in passenger earnings, used by the Interstate Commerce Commission, the rest of it is based upon your arbitrary judgment, is it?

A. I think so.

Q. Why do you put switching earnings entirely under the head of freight?

A. Because switching earnings, are in my judgment very largely the result of the freight business. There are very little earnings from the passenger business in switching. I might say that the distribution of the operating expenses furnished by Mr. Sturgis in Exhibit number 6, shows that out of something over a quarter of a million dollars of switching expenses, only fifty-four thousand dollars applies to Passenger business and the balance to freight business. That would indicate it was fair to apportion switching earnings to the freight business.

Q. Have you any other observations in reference to this matter?

1743 A. No, sir, I think not. That covers the bulk of the large items, with the possible exception of the rental, which I apportioned half and half, on a purely arbitrary basis.

Q. And you seem to have apportioned bridge tolls, rents, storage, and so forth, the same way?

A. Yes, sir, half and half. I thought by so doing it could not make any great difference in the final figures.

Q. Have you Exhibit 20 before you, the relation of earnings to maintenance of way and equipment?

A. Yes, sir.

Q. What is that made up from? What Exhibits or statements? From the Burlington rates?

A. That is made up from the statistical reports of the United States Interstate Commerce Commission.

Q. Did you make that up yourself or did someone else make it up?

A. I think I made up part of it, laid it out and had the figures filled in by one of our accountants.

Q. Turn to Exhibit 24 that was offered in evidence this morning: That statement seems to have been made up on the Missouri Pacific freight, through and local trains, from the way bills of October first, second and third, 1905, three days?

A. Yes, sir.

Q. You have that information now complete, have you, by Exhibit 27?

A. No, sir, that is an entirely different statement from

1744 Exhibit 27.

Q. Why did you confine it to the three days?

A. Because it is very voluminous to make and we thought three days would furnish a test and illustration.

Q. And that represents all the business of every character and kind of freight business of the Missouri Pacific Railroad in the State of Missouri?

A. Yes, sir.

Q. It is not limited as Exhibit 16, to freight received?

A. It is limited entirely to carloads. It does not include less than carloads.

Q. This treats entirely of carload lots?

A. Yes, sir.

Q. That statement was made up from the statement Exhibit 16. You did not have anything to do with making it up?

A. No, sir, except discussing it and deciding how to do it.

Q. It was made up by these other people?

A. Yes, sir, by our accountants.

Q. Exhibit 25, which is a statement of gross earnings operating expenses and net earnings of the freight business of the Burlington Railroad in Missouri during 1905, is gotten up on the basis that these Missouri Pacific Railroad Company statements may be applied to the Burlington situation?

A. Yes, sir.

1745 Q. And what you do is, you take the figures you ascertained from this Missouri Pacific situation, from these Missouri Pacific statements, and apply them, to the figures found in Exhibit 1, to Mr. Sturgis' testimony?

A. Yes, sir.

Q. And the same thing is true of Exhibit 26, with the exceptions you stated this morning?

A. Yes, sir.

Q. That is, in one case you deal with the operating expense as one figure, and upon one basis, and in the other you eliminate certain features of that and confine it to "conducting transportation"?

A. I eliminated the increase, but not the operating expenses. In one case I applied the figures to the total operating expenses and in the other case to that portion of the operating expenses known as "conducting transportation."

Q. That is in Exhibit 26?

A. Yes, sir.

Q. And what you mean by that is, you use the multiple representing the supposed increased cost of doing the business, to these expenses?

A. Yes, sir.

Q. In the one case confining it to conducting transportation and in the other confining it to operating expenses, except taxes, $917,000 replacement fund, and rentals?

A. Yes, sir.

Q. And then you apply in both these cases the Missouri Pacific figures as shown by these statements to the figures shown by
1746 Mr. Sturgis' Exhibit 1?

A. Yes, sir.

Q. Doing that for the purposes of illustration, and what the result would be if the conditions that exist upon the Missouri Pacific applied to the Burlington Railroad?

A. If the earnings per ton per mile that obtained on the Missouri Pacific applied to the Burlington.

Redirect examination.

By General HADLEY:

Q. Mr. Hagerman was asking you about this calculation of carload and less than carload that you had reduced the carload to a common level: Do I understand you correctly in that expression as meaning that in the term "carload" you included all freight that took a carload rate?

A. Yes, sir.

Q. And in the term "less than carload" you included all business that took a less than carload rate?

A. Yes, sir.

Q. So there was no common level that distinguished between carload rates and less than carload rates?

A. That is right.

Q. You spoke in your answer to Mr. Hagerman's question, directed to your qualifications to distinguish as an expert, that your familiarity with railroad business had been largely gathered from an examination of accounts?

A. Yes, sir.

Q. And that those accounts disclosed the results of all parts
1747 and phases of the railroad business: I want to ask you if you have had occasion to make calculations or figure up as to future earnings and future expenses, in the operation of railroads?

A. Yes.

Q. In the operation of street railroads in the City of St. Louis, did you make an estimate as to the future, as to what would be their earnings in a certain time?

A. Yes, sir.

Q. Explain that test in a general way, I do not care for the details.

A. The result of my estimate upon the business of two years in advance, as I recall it now was within one thousand dollars of the gross earnings realized, on total earnings of seven million dollars.

Q. During what years was that examination made?

A. The examination was made in 1903, this particular one.

Q. In that, I understand you have figures showing earnings and expenses during a certain period, and then you made a calculation as to what would be their earnings, expenses and profits, for two years in advance?

A. Yes, sir.

Q. And in that calculation you came within how many dollars of being absolutely correct?

A. Something like one thousand dollars.

Judge SPENCER: We object to that testimony and ask that it be stricken out as being irrelevant and incompetent.

1748 The objection is overruled.

General HADLEY:

Q. Have you had occasion to make computations as to the relation between earnings and expenses in the operation of steam railroads, for business interests?

A. Yes, sir.

Q. And in such calculations did you take into consideration and investigate what entered into the expenses of operation, and what produced the revenue from operation?

A. Yes, sir.

Q. Can you mention some of those instances, without going too much into detail?

A. I think I prefer not to, General Hadley. Our relations with our clients are confidential.

Q. They were made for financial interests, looking toward investment, and things of that kind?

A. Yes, sir.

Q. You spoke of the apportionment of expense, between freight and passenger business, and you used the expression, in answer to Mr. Hagerman's question, that you had apportioned all of the earnings from the express business to passenger business; and that was an arbitrary judgment. And then you afterwards stated it was made because all of the expenses in the doing of the express business were charged against the passenger business: What arbitrary judgment was there in that matter, Mr. Ludlam?

1749 A. The arbitrary judgment that if the expenses were charged against the passenger business, the earnings should be credited to the passenger business.

Q. How arbitrary was that?

A. It was not arbitrary, but it is customary.

Q. Is the same true as to the mail earnings?

A. In my judgment, yes.

Q. The only apportionment that was arbitrary was the one where you divided it, based on 50 per cent, between the two traffics?

A. Yes, sir.

Q. Which was made without reference to how the expenses were apportioned?

A. Yes, sir.

Q. Did you have in your estimate as to that 50 and 60 per cent showing or calculation you made, the revenue per ton per mile upon through interstate carload business?

A. No, sir. That figure was all of the interstate carload business. The revenue from the through interstate carload business would in my judgment have been considerably less per ton per mile.

Q. Upon the basis of calculation that you used, taking the revenue per ton per mile upon all carload interstate business, was an advantage to the company in the calculation?

A. Yes, sir.

Q. As compared with what would have been the result, had you taken it upon what is known as "Overhead" or through carload business?

A. Yes, sir.

1750 Q. Your testimony as to the manner in which the live-stock shipments into and out of Kansas City stock yards were apportioned between State and interstate freight, came to you from Mr. Taliaferro, did it?

A. Yes, sir.

Q. And Mr. Taliaferro*m* has the definite information upon that subject, more than you have?

A. Yes, sir, and I think I so stated in my testimony.

Q. In making this calculation as to the earnings that the company would have, upon State and interstate freight, in carload and less than carload business, you have taken a certain multiple of increased expense for the doing of State as compared with the doing of interstate business: You stated that you took that multiple upon the basis of your understanding of the testimony?

A. Yes, sir.

Q. What did you mean by that, your understanding of Mr. Sturgis' three-fold ratio?

A. No, sir.

Q. You excluded Mr. Sturgis' three-fold ratio in that calculation?

A. Yes, sir.

Q. And that was upon the increased cost of the handling of the average ton mile of State and interstate freight, without reference to the proportion to earnings?

A. Yes, sir.

Q. And that was done, as I understood you, simply as a demonstration, to show that even if their theory was correct, there would still be an earning upon State business?

1751 A. Yes, sir.

Mr. LADD:

Q. Take the question of freight operating expense in Missouri as shown by Exhibit 6, both State and interstate, what percentage is that of the gross earnings upon freight in Missouri?

The MASTER: Does not the Exhibit itself show that?

Mr. LADD: I don't know whether it does or not.

A. Yes, sir, the exhibit shows it. Both Exhibit 25 and Exhibit 26, 55 and 79 per cent is how it figures out.

Judge SPENCER: For the present we are through with Mr. Ludlam.

A. P. TALIAFERRO, re-called, testified as follows:

Direct examination.

By Gen. H. S. HADLEY:

Q. You testified at Kansas City, Mr. Taliaferro, and you also testified, I believe, as to what experience you had had not only as an accountant but also in the operating department of railroads, didn't you?

A. Yes, sir.

Q. You gave all the experience you had in that regard in your testimony, did you?

A. Yes, sir.

Q. Have you made some investigation as to the general conditions relating to the operation of the Burlington Railroad in the State of Missouri, in connection with this case?

1752 A. I made some few inquiries, but nothing of any very extensive nature.

Q. You acquainted youtself with the freight divisions and the location of the cities and the location of their lines, and such things as that?

A. Yes, sir.

Q. The general outline of the situation?

A. Yes, sir.

Q. You have heard all the testimony that has been given in this case, haven't you?

A. Yes, sir.

Q. You have been present at every hearing?

A. Yes, sir.

Q. I want you to give to his Honor your idea as to whether there is any increased expense in the doing of State as compared with interstate freight business, the handling of the average ton mile in the two classes of business?

Mr. HAGERMAN: I object to that because the witness is not shown to be competent to express an opinion upon that subject.

The MASTER: He certainly has shown a familiarity with subjects which lead to or are connected with that which would enable him to testify on the subject. I will overrule the objection.

A. Of course I have in mind all the testimony that has been given, and my opinion is based largely on that. I believe this is a comparatively new question, and I do not think it is one that any-

1753 body would have an opinion about until he studied it and thought about it. I do think there is some additional expense in connection with purely State business which is not incurred in connection with the interstate business.

Q. I want you to give the amount of that increased expense.

A. I do not think any distinction can be made, so far as the maintenance expense, the maintenance of way and structures and the maintenance of equipment are concerned, as between State and interstate business. I think that all of the facilities would be needed, if either class of business was eliminated, and that the facilities that

are provided are being used constantly for both classes everywhere. I do not think there is any increase in the general expenses.

Q. What do you mean by the general expenses?

A. Those distributed and charged as general expenses, as the salaries of general officers, office expenses, clerks, legal expenses, insurance, and things of that sort. It seems to me they would be higher on interstate business because of the fact that the interstate business, the long haul business, is more complicated to handle, takes more men to get it, and more people in the offices to look after the accounts in regard to it. So, according to my idea, the extra expense is confined entirely to the conducting transportation. I think there are a number of expenses under that head which are not incurred any more in connection with the State than the Interstate business, and possibly less in some cases.

1754 Q. Mention some of them, Mr. Taliaferro.

A. Here is one "Switchmen, flagmen, and watchmen." I understood Mr. Elliott to testify he thought that would apply more to interstate than to State business. I think that is right. "Damage and loss of freight"; the further a shipment travels the more liable it is to damage, and the more times it is handled. "Superintendent"; it seems to me the local business is a business that largely takes care of itself.

Q. What do you mean by that?

A. It is easily handled. Everybody understands just what to do with it. That is not always the case with business that is going a long distance. Business that is destined to faraway points—of course, that does not apply specially. But it frequently has to be held for other roads. Or special cars have to be loaded, going in that direction. Various things, which do not apply, according to my opinion, to State business, or business not going so far and not going off the company's own line. Those are the principal items I notice here.

Q. As I understand you, in taking those expenses which would refer to maintenance of equipment and right-of-way, you think there is no additional expense to be apportioned to interstate than to State business in those items?

A. That is my judgment.

Q. They should be divided according to the volume of the two kinds of traffic: Is that right?

A. Yes, sir.

1755 Q. Do you mean divided according to the revenue that is derived from them?

A. I mean the volume per ton or pound.

Q. Tons mile- or tons?

A. I think ton miles, because a car may be going two hundred miles with a shipment, and another one going only forty miles.

Q. That is, the volume of traffic means ton miles hauled?

A. That is the idea I have about it now.

Q. And if there is any increased expense in the doing of State business it occurs entirely in what are known as operating expenses?

A. In conducting transportation.

Q. Why is that, in your opinion, that there is any additional expense, carrying the average ton of freight, in State and interstate business, in the conducting transportation item?

A. I think there is more handling of the business at the station.

Q. Does the length of the haul enter into it?

A. Yes, sir.

Q. And there are some of these expenses incident to maintenance of equipment and general office expenses, where the proportion to be assigned to interstate——

A. You spoke of "maintenance". I did not include maintenance.

Q. What were the items?

A. The general expenses.

1756 Q. But balancing up the whole thing, what would you give as the increased expense of handling the average ton mile of freight in the State freight business as compared with the expense of handling the average ton of freight per mile in the interstate business.

A. I think 50 per cent more.

Q. Now, taking it in proportion to revenue, what would you say?

A. I would say it was less.

Q. What was less?

A. Expense in proportion to revenue is less, I would say, in State than on interstate business.

Q. That is, when you take into consideration the revenue derived in the handling of State freight as compared with the revenue derived from handling interstate freight, the expense of producing a dollar according to the revenue derived would be less in the State than it would be in the interstate business?

A. In my judgment, I think so.

The MASTER:

Q. As I understand you, it would cost less to earn a dollar in the transportation of freight which is purely State than to earn a like dollar in transporting interstate freight?

A. Yes, sir.

Mr. HADLEY:

Q. Why is that so?

A. I have in mind what I have always heard about the local business and the efforts of every railroad company to build it up and of the willingness to take whatever they can get out

1757 of the interstate or through business, the long haul business, to supply them with funds and help build up the property. I know that every railroad company—at least I believe that is so—every one I know anything about does all it can to build up its local business, as that is the best paying business.

Q. What is your opinion, from your knowledge and investigation of the railroad situation generally, as to what are the best paying railroads; those that have the largest or the smallest local business?

A. My understanding is those doing the largest and best local business are the most prosperous roads.

Q. What roads would you mention in that category?

A. Almost any of the railroads in the east north of the Ohio River and the Potomac River.

Q. During the period when we were having railroad receivership, do you know of any case where a road that had a large local business, during that time, went into the hands of a receiver?

A. I don't know about that, off-hand.

Q. As I understand you on that, your idea is that the railroads are always trying to build up their local business?

A. Yes, sir.

Q. And the most prosperous roads are those which have the largest amount of what is called local business?

A. Yes, sir.

Q. Are you familiar with the location of the Burlington Railroad in the State of Missouri?

1758 A. I have studied the map considerably.

Q. How is that railroad constructed in reference to the handling of local or what would be called strictly through business in the State of Missouri?

A. Through business, in the sense it is handled on through trains, is of course handled in Missouri all the time from one river to the other. As to the physical conditions, I know nothing.

Q. I mean by that, is the road built as an air line or is it built with reference to these towns and settlements which would furnish local business?

A. I don't know that from an inspection of the country. I understand that north Missouri is a good agricultural country.

Q. You know from the railroad map as to that?

A. Yes, sir.

Q. That is, it is built with reference to the location of towns?

A. That is my understanding.

Q. Coming back to the proposition you were advancing with reference to the increased expense of doing State business as compared to interstate business, your testimony upon the comparative expense of handling the average ton mile of State as compared with the expense of handling the average ton mile of interstate freight is 50 per cent greater in State: Is that correct?

A. Yes, sir.

1759 Q. Does that include carload and less than carload freight?

A. I spoke only of carload business. Less than carload business is so small a part of the total business and the new rates being entirely on carload business, I have not thought very much about the cost of less than carload business.

Q. What is your idea of whether there is an increased expense per ton per mile in the handling of less than carload State business as compared with less than carload interstate business?

A. I think the cost of handling less that carload interstate freight is greater than the cost of handling less than carload State business.

Q. But it was only as comparing the carload State and interstate business that you thought 50 per cent increased expense should apply?

A. I had that particularly in mind, yes, sir.

Q. So, instead of subscribing to the three to five times increased expense per ton per mile, you put it at simply 50 per cent of the 100 increase?

A. Yes, sir.

Q. And on the basis of the proportion to revenue, what do you say as to the increased expense in the State as compared with the interstate business, or the increased expense of interstate as compared with State business?

A. I should like to stop by merely saying that I believe the cost is less on State than on the interstate, without attempting to give any figures.

Q. From your investigation of the earnings of Missouri
1760 roads, what you have worked on, the Missouri Pacific and the Wabash, I believe?

A. Yes, sir.

Q. What do you say as to the comparison of the revenue per ton per mile upon State freight business as compared with the revenue per ton per mile upon the interstate business, carload business?

A. You mean what result?

Q. Yes.

A. This completed statement (I think it is Exhibit 27) shows that the average revenue per ton per mile on interstate carload business was 6.6569 mills; and on State carload business was 1.21698 mills. I don't know that I have stated those decimals just right. I figured that the State carload business is almost twice that of the figure for the interstate carload business.

Q. That is, the earnings on the average ton of freight handled in the State freight business is practically twice as much as the revenue on the average ton of interstate freight handled?

A. Interstate carload freight.

Q. You are speaking of carload freight now?

A. Yes, sir.

Q. What is the comparison upon less than carload?

A. Interstate less than carload 2.80231 cents. State less than carload 4.48968 cents.

Q. That makes what multiple?

A. About sixty per cent.

1761 Q. Sixty per cent of what? I don't follow you.

A. 65 per cent. The earnings per ton per mile on the interstate less than carload freight are about 65 per cent of the earnings per ton per mile on the State less than carload.

Q. So then, the earnings per ton per mile upon the less than carload State freight are higher than the earnings per ton per mile on the interstate less than carload freight?

A. Yes, sir.

Q. Is that practically twice as high, the earnings upon less than carload State freight?

A. It is about two-thirds for interstate, two-thirds of State.

Q. On both classes of freight less than carload and carload, the revenue per ton per mile on State is higher than from the interstate business?

A. That is correct.

Q. Taking the carload State business in which the revenue is almost twice as much, does that more than make up the increased expense you have testified existed, in your opinion, for the handling of State carload as compared with the handling of interstate carload business?

A. I believe it does.

Q. That is, there is an increased expense of fifty per cent and an increased earning of practically one hundred per cent?

A. Yes, sir.

1762 Q. Now, you are reading from what calculations there, that you gave the figures from?

A. This is Exhibit 27. It shows the completed Missouri Pacific figures for the month of October, 1905.

Q. And is that for freight handled in the State of Missouri at the rate the Missouri Pacific Railroad Company was hauling freight for in the month of October, 1905?

A. This statement is based on the actual transactions for that month.

Q. That is what they actually received?

A. It is based on the way bill figures.

Q. Do you think that is a pretty fair example of the general freight situation in the State of Missouri?

A. I believe it to be.

Q. Do you think that would be unfair to apply the results of that investigation to the Burlington railroad, from your knowledge of the situation of the two lines?

A. Well, I have an idea that this shows a higher revenue per ton per mile than the Burlington figures will show.

Q. Why is that?

A. Because the Missouri Pacific Railroad stops at the Mississippi River. It does not run east of the river, and I am under the impression it does not join in any through rates, but gets its part of the through rates west of the river. Therefore, its revenue is not made thinner by having to join in those low rates that exist east of the river.

Q. That would apply only to interstate earnings, wouldn't it, Mr. Taliaferro?

1763 A. Yes, sir, entirely.

Q. About State earnings, what difference would there be?

A. I do not believe there would be any appreciable difference.

Q. As I understand it, the fact that the Missouri Pacific does not divide on the rates east of the Mississippi river would give the Missouri Pacific Railroad higher rates on its interstate traffic than the Burlington?

A. That is my idea of what the Burlington figures will reveal.

Q. In other words, the Missouri Pacific Railroad gets its division of the interstate rates upon the basis of the increased local rate in Missouri as compared with the local rate east of the Mississippi river: Is that it?

A. Any through rates from Chicago, for instance, to Missouri

would be lower, generally, for the same distance, starting at Missouri and going west, and Missouri being allowed a proportion of those lower through rates would necessarily, in the case of the Burlington or any road which divided its earnings upon a mileage basis, and having part of its line east of the River would receive.

Q. That is, the rates west of the Mississippi River are lower than the rates west of the Mississippi River: That is so?

A. That is the idea. I have not proved this in any way. I have not had any opportunity to do so, but that is my judgment of what will be shown.

1764 Q. This exhibit you are testifying from, was that prepared under your personal direction and supervision?

A. Yes, sir.

Q. Have all these exhibits that have been introduced here in connection with your and Mr. Ludlam's testimony, confirming which Mr. Hagerman cross-examined Mr. Ludlam, all — prepared under your personal direction and supervision?

A. Yes, sir. I have not been at the Missouri Pacific offices all the time, but I started the men, visited the offices frequently until the work was well under way, and discussed the matter with the men engaged in it, at our office, every evening, I might say, and sometimes twice a day.

Q. You directed the compilation of the figures and gave such examination as you thought necessary to determine their accuracy?

A. Yes, sir.

Q. In apportioning these additional expenses on the ton mile basis, for the doing of State as compared with the doing of interstate business, what element did you consider as adding this increased expense?

A. I think it is the terminal expense, the station expense.

Q. Is that a result of the longer haul upon interstate carload business as the comparative haul of State business?

A. No, sir, I think it is the greater use of terminals by the State business than by the interstate business.

Q. You place it then upon the increased number of hand-
1765 ling- incident to the doing of State business in carload lots?

A. Yes, sir.

Q. What element is it that enters into the handling of less than carload interstate shipments that makes it more expensive per ton mile to handle than class of business in the interstate than in the State traffic?

A. I think, generally speaking, of course there are expenses on less than carload business which is not loaded for long distances. I do not think the bulk of it is handled in that way. It may be loaded in the car from Chicago to Hannibal and rehandled there, or from Chicago to Brookfield and rehandled there, for stations between Brookfield and Kansas City or St. Joseph. It may be loaded in a car at Chicago for Hannibal, when for stations between Hannibal and St. Louis. And when it is so handled it has to be taken out of the car and sorted and arranged in station order for proper de-

livery between Hannibal or Brookfield, as the case may be, and the next terminal point.

Q. In other words, there is more warehouse handling incident to the doing of interstate carload business, because it goes further?

A. Yes, sir, because it goes further. That is my idea.

Q. Coming down to your qualification to express an opinion upon the subject, have you also read the testimony of the various experts who have testified in the various maximum freight rate hearings?

A. I have read some of the testimony of the Nebraska case, and the North Dakota case.

1766 Q. Whose did you read in the Nebraska case?

A. Mr. Fink and some of Mr. Utt.

Q. Were they both experts for the railroads in those cases?

A. Mr. Fink was. Mr. Utt was, too, but as to his experience I do not know. I do not know very much about his qualifications.

Q. Have you given any attention to the decision of the State Board of Railroad and Warehouse Commissioners as to these matters?

A. I have read their decision.

Q. Since this investigation began, to what extent have you made special study of the comparative cost of doing State and interstate business?

A. I have been thinking about it constantly for six months, and getting all the light I could on it from everybody I could consult about it, that I thought could give me any information.

Q. Did that include the operating business of both the Wabash, the Missouri Pacific and the Burlington?

A. No, sir, not at all of the Wabash and the Missouri Pacific, and only so far as the Burlington officers testified. I listened very carefully to their testimony.

Q. I mean how the local and through freight was handled. How have you informed yourself upon that subject?

A. As to the customs in this part of the country I have gotten my information largely from a man who has been in the practical part of it right here for years.

1767 Q. That is, you have acquainted yourself with that feature of it by inquiring from those engaged in that business?

A. I made inquiry as to things done here, as I knew how they were done in the east, and in Virginia where I had most of my railroad experience.

Q. Did you find any difference prevailing in this State than that which obtained generally in the railroad business with which you had been familiar?

A. No, sir, I think they all try to do things very much on the same lines.

Q. What distinction can be made between State and interstate business, between the operation of these two classes of business and the carrying along of through and local trains?

A. Undoubtedly both classes of business are handled on both classes of trains and the extent to which that is done depends entirely upon the character of the country and the character of the business the railroad is doing.

Q. Does it also depend upon the location of the towns and the length of the railroad divisions?

A. Yes, sir.

Q. And as to with what commercial centers a certain territory trades?

A. Yes, sir.

Q. From your knowledge of the freight divisions on the Burlington road and the location of the commercial centers upon the Mississippi and Missouri Rivers, what would you say as to
1768 the amount of State freight handled in through trains or of through freight handled in local trains in Missouri, whether it was less or more? What would be the average experience in that regard?

A. My idea is that the conditions in Missouri are quite as favorable to the economical handling of business, that is, handling it on through trains, as anywhere I know of at all, if not more so, because of the location of the large centers at the east and west borders.

Q. Do you mean State business?

A. Both classes.

Q. That is, as to whether a normal amount of State freight would be handled upon through freight trains?

A. That is what I mean. I think it is possible to handle a great deal of State business on the through trains in Missouri.

Q. And does that apply to the Burlington road as much as any other Missouri road you know of?

A. I would assume that to be the case. I do not know anything about it beyond that.

Q. There has been a class of interstate freight spoken of here which has been called first class, and by Mr. Hagerman, overhead freight,—you understand the meaning of that term, do you?

A. Yes, sir.

Q. That would be freight which passes clear through Missouri, its origin and destination both being east and west of the State in each instance?

1769 A. Yes, sir.

Q. Take it upon the Burlington line, what would be the natural and easy way of handling that freight? Would it go through Missouri at all?

A. I think the proportion of the through interstate business in Missouri to the total interstate must be very small as compared with what it would be, for instance, in Iowa. I say that, knowing we are going to get figures which will give the exact figures.

Q. Give us your idea, briefly.

A. Because of the location of the Burlington line. Any business from Chicago or the east going to Denver or any point in the west or northwest would, I believe, be handled over the direct line which runs through Iowa.

Q. Take it on the interstate business that would be done by the local freight trains, how many north and south lines are there on the Burlington that cross the north line of Missouri?

A. This map indicates that there are six including the two that come together at Sedan.

Q. And are those what are called main lines or branch roads?

A. As between the two they would be called branch lines.

Q. And what kind of freight trains are operated on branch lines?

A. Without having any absolute knowledge of the matter I would say the business there is done principally by local trains.

1770 Q. And what would be your judgment as to whether there would be an abnormal interstate business that would be handled on these local freight trains or these north and south lines crossing the north line of Missouri?

Judge SPENCER: How can he have any judgment without any information on the subject at all? He has stated he has none.

The MASTER: That simply goes to the value of the judgment rather than to the competency of giving that judgment.

General HADLEY: He has knowledge of the topographical and geographical situation as shown on the map.

Judge SPENCER: The map is better evidence than the witness when the witness says he has no knowledge.

A. I think I also remember that Mr. Willard testified——

General HADLEY:

Q. Has your attention been directed to this feature before and has it been the subject of investigation and discussion with you, talking over this subject?

A. Yes, sir.

Q. What is your idea upon that question as to whether these local freight trains would carry interstate freight in a proportion different than would exist upon a main line railroad?

A. They all run into Iowa and my impression is, and I started to say, I got it from the testimony, I think, that Mr. Willard

1771 gave, that these lines are operated principally by what we know as local freight trains and are not available as through freight trains.

The MASTER:

Q. Would not anybody's judgment be as good as this witness if he has no more judgment than he says? Why take his judgment upon that subject more than anybody's else judgment?

General HADLEY: Because he says he knows about the kind of freight handled on local and through freight trains. I think any sensible man could do it as well as Mr. Taliaferro.

The MASTER: I will permit him to give his judgment if you want it.

A. I don't know what trains are run over those lines.

General HADLEY:

Q. To sum it up, Mr. Taliaferro, do you think it a fair method of calculation to assign all of the increased expense of operation of local

freight trains as compared with the operation of through freight trains to the State freight business?

A. No, sir.

Q. What information is necessary, in your opinion, to make a practical, accurate calculation as to the relative expense of doing State and interstate freight business?

A. I think the principal information that would be necessary would be to know how the business was handled, on what classes of trains.

Q. That is, to know how much State and how much interstate business was handled on through freight trains and how much on local freight trains?

1772 A. Yes, sir.

Q. What would be the comparison you would make of the proportion of the volume of the two traffics?

A. I have this in mind: If the ton miles of State freight are, say, 10 per cent of the total ton miles of all the freight in the State; and the ton miles made by the through trains are 10 per cent of the ton miles of all the State trains, that would indicate that some similar condition existed with the other class of trains and the cost then would be then very nearly the same for both classes.

Q. Let me see if I understand you: Assuming the total number of ton miles of freight handled by the Burlington system in a certain time was 100,000 ton miles, both State and interstate: You say 10 per cent of that was State freight and 90 per cent was interstate, and then all the ton miles of freight handled by the through freight trains, ten per cent of that amount was State freight, then the expense of doing the two classes of freight would be approximately the same?

A. Approximately so.

Q. Because if 10 per cent of the ton miles of freight handled by the through freight trains would be State freight, then would it necessarily follow that 10 per cent of the ton miles of freight handled by the local freight trains was State freight and 90 per cent of that tonnage was interstate?

A. Yes, sir.

1773 Q. So, then, the result of that proposition advanced by you, as I understand it is this: If you have information of the total ton miles for a certain period, and have information as to how it is divided between State and interstate, and then get the per cent of State and interstate upon either the through or local freight trains, you can make a definite approximation or calculation of the expense of doing the two kinds of business?

A. When you say a definite approximation, I say you can tell how nearly the expense of doing the two classes of business would agree, how nearly alike they would be. I do not think it would fix the cost.

Q. It would show the increased cost of doing the other class of business?

Judge SPENCER: You mean it would show the relation one bore to the other, not the actual cost, just the relation of the two?

A. Yes.

General HADLEY:

Q. It would indicate the proportion of increased expense of handling a ton mile of State freight as compared with the increased cost of handling a ton mile of interstate freight?

A. Yes, sir, I think so.

Q. If you had the total expense of operation of through and local freight trains, you could apportion them accordingly?

A. Yes, sir.

Q. Is that information such as could be gathered from the way bills of a railroad company?

1774 A. No, sir.

Q. What element would not be furnished by the way bills?

A. The way bills do not give any information as to the character of the train on which the business is handled.

Q. Are records kept by the railroad company which would determine the character of train upon which the business is handled?

A. None that I know of that would give that information without compiling it. I do not know that it would be possible to do it.

Q. How about the conductor's reports?

A. It could be worked up in an approximate form and I believe a test could be made, by starting in and compiling it on the business for a period, and make it exact.

Q. I see you have made a division between through and local freight trains in your calculation for the Missouri Pacific.

A. On those three days?

Q. Yes.

A. We did that taking into consideration the destination and origin of the business and doing it on the train we thought would naturally handle it.

Q. What do you mean by that? Naturally handle it, if operated with good judgment?

A. Yes, sir, and according to the usual methods. For instance, a car for St. Louis would be put on the through train all the way through.

Q. From where?

1775 A. I meant to say from Kansas City. A car from Kansas City to some point east of Sedalia to a small point east of Sedalia would be put on a through train to Sedalia and on a local from Sedalia to the point of destination.

Q. In making the apportionment on the Burlington, if you had a way bill on freight originating at St. Joseph and ending east of Brookfield, you would apportion that portion of the shipment which went to Brookfield on the through train and from there to the local point on the local train: Is that the idea?

A. Yes, sir.

Q. So the apportionment between the local and the through trains would be made on what might be called the ideal basis?

A. We did so in that statement.

Q. What would be a correct basis of railroad operation?

A. Well. I meant what we understand from operating information in this case to be the customary and usual and intended way of doing it; they would do it if they could, always.

Q. These calculations as to the State and interstate freight for the period of three days on the Missouri Pacific was prepared also under your personal direction?

A. I outlined the work and followed it and consulted about it with the men who did it and decided some points from time to time, that were not clear. I consider it was done under my direction.

1776 Q. Is the apportionment of freight for those three days, between the through and local freight trains as shown in the compilation, one that you personally made, or made in accordance with your directions?

A. Yes, sir.

Q. And you think that is correct?

A. I think it is gotten up on that basis, yes, sir.

Q. Mr. Ludlam was asked about this livestock situation in Kansas City: Just explain how you handled these livestock shipments?

A. We started out with the idea that livestock from Kansas City to points in Missouri was State business. Somewhere along the line we learned that all of the pens were in Kansas and for that reason, in making up the final summary we put that business into the interstate business, and I believe that has had more than anything else to do with raising the average revenue on the interstate carload business. That is, more than any one thing.

Q. You think if they are put in State, it would show increased earnings on State and lower the earnings on interstate?

A. Yes, sir.

Q. From whom or where along the line did you get that information about the pens?

A. Our men directly in charge got that information.

Q. Did you send a man to make that investigation?

A. We sent a man to Kansas City several months ago.

Objected to as purely hearsay.

1777 Judge SPENCER: He has testified the pens are all in Kansas, and that is why he changed it. What difference does it make who got that information?

General HADLEY:

Q. Is that man here?

A. The information was gotten here from somebody in the Missouri Pacific office.

Q. That can be ascertained?

A. Yes, sir.

The MASTER: It is sufficient for this witness to state he acted upon the information he received. If you wish to pursue the subject further, of course you may do so.

The WITNESS: I would like to say this. We have not pursued any policy in getting up this Missouri Pacific statement. They helped us in any way they could, inquiring if we had everything, and so forth. We assured them we wanted to get it all in and wanted to get it in in the right place. Whenever was wanted information we asked for it and got it and I have not hesitated to ask for it because I was assured we were getting correct information.

General HADLEY:

Q. Was it from information you got from the Missouri Pacific itself that you acted?

A. In connection with the livestock?

Q. Yes.

A. Yes, sir. That information was not in connection with Missouri Pacific business.

Mr. LADD:

Q. I want to ask you, Mr. Taliaferro, if you made a
1778 memorandum, as I presume you did, you and your associates, from which these tables or exhibits which have been put in today and possibly before today, were compiled from the regular Missouri Pacific business?

A. Yes, sir.

Q. What did you call those, your working sheets?

A. Yes.

Q. Have you preserved them?

A. Yes, sir.

Q. Are you willing to show them at any time to the Missouri Pacific expert or the Burlington expert?

A. Yes, sir.

Q. Will they point out the source from which you got the information, the books?

A. Yes, sir.

Q. They are open to the other side, are they?

A. Yes, sir.

General HADLEY:

Q. I omitted to ask you one question: Have you made any calculation in your own mind of the relative expense of handling the ton mile of freight on the local freight trains compared with the expense of handling a ton mile of freight on the through freight trains?

A. No, sir.

Q. Your judgment is it is greater upon the local, as you have already testified?

A. Yes, sir.

1779 Cross-examination.

By Mr. HAGERMAN:

Q. What is your age?
A. Thirty-four.
Q. And the extent of your actual railroad operating experience?
A. I was in railroad work altogether about sixteen years.
Q. In what kind of a position?
A. My first work was in the railroad shops in Roanoke, Va.
Q. In what position?
A. I was a mere boy, and worked around the car shops. I went into the master mechanic's office, and then——
Q. What position did you hold in the master mechanic's office?
A. Messenger; I was about fourteen. Then I went to the Superintendent's office.
Q. When you got into the Superintendent's office what position did you hold?
A. Messenger boy; later, secretary; and then, acting chief clerk.
Q. What was your age then?
A. Seventeen, I think.
Q. When you left there?
A. When I left there I was nineteen.
Q. You were there two years?
A. Yes sir.
1780 Q. What was your next railroad experience?
A. I went as private secretary to the gentleman who was in charge of the traffic of the Norfolk & Western Railroad.
Q. How long were you with him?
A. I was with him about a year and a half, and then went to Philadelphia with him when he went with the Reading.
Q. What position did you hold then?
A. Secretary and chief clerk.
Q. For how long?
A. He was there only a few months. I remained for a year with the Reading road, and then went back to the Norfolk & Western.
Q. To the same position?
A. I went back as secretary of the General Freight Agent; and then in a short time took a desk as Rate Clerk.
Q. Were you a stenographer?
A. Yes sir.
Q. And stenography was part of your duty during that period?
A. Yes sir, up to the time I took the rate desk.
Q. How long were you rate clerk?
A. I think about a year and a half with the Norfolk & Western, or possibly two years.
Q. Then, next?
A. I went to Harrisonburg, Va., with the Chesapeake & Western as general clerk.
Q. In what department?
A. It was a small road. I did everything there.

1781 Q. How long were you there?

A. About four years altogether, about two years of which time I was Superintendent of the road.

Q. How long a road was that?

A. Twenty-seven miles.

Q. Anything more in the way of railroad experience—Was that a Haskins & Sells road?

A. They were both interested in it during part of the time I was in charge of it.

Q. Was it in course of construction?

A. It had been completed when I went to it.

Q. What was your next experience?

A. I went to Southwest Virginia as General Superintendent of two little railroads.

Q. About how long were they?

A. About thirty-five miles altogether, including the logging roads.

Q. Were those Haskins & Sells roads?

A. They had nothing whatever to do with them.

Q. Were they logging roads?

A. They were built principally to develop some timber properties.

Q. They were what we call logging roads?

A. There was good country behind them.

Q. But they were not doing much commercial business?

A. Not a great deal.

Q. What other railroad experience have you had?

A. That is all.

1782 Q. How long have you been with Haskins & Sells?

A. I went back to them from a position I had in Texas, about a year ago.

Q. How much of your time has been devoted to this rate case?

A. Just six months.

Q. Practically all your time since last June?

A. Yes sir.

Q. And you have been particularly in charge of the investigation of the Wabash?

A. Yes sir, and of the Missouri Pacific, so far as we have gone.

Q. Who was the active man in getting up these statements?

A. The Missouri Pacific?

Q. Yes, the statements that you introduced in this case.

A. We had, I think, three men in charge of it altogether.

Q. Mr. Ladd asked you something about your proof-sheets? *A.* Have you some sheets of your own in relation to this Missouri Pacific situation?

A. Oh, we have everything we have taken off.

Q. I am not talking about "we," but your personal work, and what you did.

A. In making up these statements I made none of the figures.

Q. You have none of the figures or calculations?

A. No sir.

Q. Other men have done the work?

A. Yes sir.

1783 Q. Who is the man who is in charge of that work, and would definitely know about the correctness of it?

A. As I say, one man has not been in charge of it all the time.

Q. One man was in charge of it part of the time, and some other man in charge another part of the time; is that it?

A. Yes sir.

Q. Who are they?

A. Mr. Hamilton, Mr. Willis and Mr. Gilliam.

Q. They are the men who have the proof-sheets you spoke of?

A. They are in the office.

Q. The proof-sheets they made?

A. Yes sir, they turn them in from time to time.

Q. Your study of this question of whether there is any increased cost, is based upon your study of this case, listening to the testimony, and reading up about it, since this case has been instituted; is that right?

A. Yes sir.

Q. And the sum and substance of it is, that you are not prepared to express any kind of an opinion as to the increased expense of doing the less than carload business, if any?

A. Over carload business?

Q. Or comparing it with anything else. I understand you to say you made no figures or estimates as to the shipments of less than carload lots: is that true or not?

A. I haven't any. I read Mr. Fink's testimony in the

1784 Nebraska case, and he put it at four times.

Q. I object to your statement of what some one else said. I ask if you made any estimate of your own?

A. I could only do it by studying.

Q. Have you done so.

A. I hould say four times was full high.

Q. Four times as much to do less than carload business than what —carload?

A. Than the carload business.

Q. Then on the State carload business you think there is a fifty per cent increase per ton per mile?

A. Yes sir.

Q. Over the interstate carload business?

A. Yes sir.

Q. Of what do you make up that fifty per cent increase per ton per mile?

A. Principally of the extra cost of station service.

Q. That is the extra cost of terminal service?

A. Yes sir.

Q. And the distribution of it out over the length of the haul?

A. Yes sir.

Q. These Missouri Pacific figures have been handed in here for the purpose of comparison and application to the Burlington situation?

A. Well, they have been used in that way.

Q. And you are now in the course of preparing statements from the Burlington road itself as to the amount of tonnage, so as
1785 to get up statements of a somewhat similar nature to apply to that company itself?

A. Yes sir.

Q. Those have not yet been completed?

A. No sir.

Q. And so far your figures gotten up in the different statements that have been presented, assuming that the situation was similar on the Burlington to what it was on the Missouri Pacific, then you might apply the Missouri Pacific figures so as to get the results you got?

A. That is true.

Q. It would be more nearly the situation to represent the idea you are trying to represent, when you complete this work, and have your Burlington figures?

A. Yes sir, it would be more satisfactory to me, I am sure.

Q. Can you think of anything else in your mind that goes to make up this four times the cost of doing the less than carload business than the carload business, than the terminal expense and the length of the haul?

A. That brings in the light loading of the cars.

Q. That is, you are allowing for that?

A. Yes sir.

Q. What part of the four times do you allow for the loading of the car?

A. I have not divided that in my mind.

Q. Do you mean by that the service engaged in loading it?
1786 A. No sir, I mean the lading; the weight of the freight.

Q. That is to say the waste space in loading cars with less than carload lot?

A. Yes sir.

Q. Now what else is there that goes to make up that four times the cost?

A. I think that covers it all.

Q. And your opinion upon that subject is that per ton per mile four times would represent the extra cost?

A. Yes sir.

Q. But when you come to the carload business, and distinguish that, you say the State carload business would cost at least fifty per cent more than the interstate carload business: what did you take into consideration to get that increase?

A. I took into consideration the shorter distance hauled, and the extra terminal.

Q. Anything else?

A. Those are the main things in my mind.

Q. Those are the only things you took into consideration?

A. Yes sir.

Q. And in each of those cases the extra cost you figure upon the basis of per ton per mile?

A. Yes sir.

Q. Has your time been divided between the Wabash, the Missouri

Pacific, and the Burlington? Hasn't your work been mainly with the Wabash? You were mainly in charge of that work?

1787 A. No sir. I was on that work from the middle of June until the first hearing in Chicago. We rendered our report on the Wabash prior to that time. My time has been taken up since then very largely with the testimony and statements we prepared.

Q. Your entire employment at the present time, so far as your present service is concerned, is with Haskins & Sells?

A. Yes sir.

Q. You have no interest in the firm?

A. No sir.

Q. What salary do you get from that firm?

A. $250 a month.

Q. You had your Wabash figures all complete, did you?

A. We had our report rendered. Many things have occurred to us since.

Q. Why did you take as Exhibit 16 the incomplete report of the Missouri Pacific?

A. Because we made no such figures at all for the Wabash.

Q. You did not make any figures along that line for the Wabash at all?

A. No sir.

Redirect examination.

By Mr. HADLEY:

Q. What were you testifying about when you said you made four times the increased cost per ton per mile on less than carloads, compared with what?

A. Compared with carload business.

1788 Q. Mr. Hagerman was asking about less than carload interstate business as compared with State carload business.

A. No sir.

Mr. HAGERMAN: Four times more for less than carload business; and fifty per cent more for State than interstate carload business, is what I understood him to say.

Mr. HADLEY:

Q. When you get these figures from the September way-bills of the Burlington Railroad, can you make the same apportionment, and is the same apportionment being made, between through and local freight trains, and State and interstate freight?

A. We have not done that yet. We had that in mind.

Q. It can be done, and will be done?

A. Not as part of the work that is being done now, but as a separate piece of work.

Q. I wish you would prepare and submit, as a part of your testimony, that method of calculation which you gave in reference to the same per cent of the tonnage of local or through freight trains being State and interstate freight, as the two classes of freight bear to the entire tonnage for a certain period, in order to make clear your method of calculation. I do not ask you to do it now.

Mr. HAGERMAN: I have not any objection to him preparing that statement, and bringing it at the time he brings the other.

Mr. HADLEY: I mean simply the figures he gave, in a tabulated form.

The MASTER: That would entitle counsel on the other
1789 side to cross-examine the witness in regard to such statement.

Mr SPENCER: We are through with any testimony in the Burlington case at this time. We will. of course, not want to introduce our rebutting testimony until they introduce their records now being prepared by the experts at the Burlington offices. After we have cross-examined as to them, then we wish to offer rebutting testimony as to that, and other testimony that has been introduced. I mention that fact to General Hadley at this time.

The MASTER: I hoped to get through with the Burlington case at this sitting.

Mr. SPENCER: How can we? We have gone on and cross-examined the witnesses about matters presented today, statements made up since the Kansas City adjournment. We cannot very well conclude our case, and leave open the introduction of the compilations or computations to be made from the Burlington records. We should, at least, have their case closed before we offer evidence in support of our theory.

Here follows colloquy concerning adjournment in the Burlington case until after examination of the September waybills.

The hour of six o'clock having arrived, the further hearing of testimony herein was adjourned to Wednesday, December 12, 1906, at ten o'clock, A. M.

1790 Chicago, Burlington and Quincy Ry. Co.

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1791 ST. LOUIS, *December 12th*, 1906.

Met pursuant to adjournment as above, on Wednesday, December 12th, 1906, at ten o'clock, A. M.

Present parties as before.

The following proceedings were had

Redirect examination of Mr. A. P. TALIAFERRO, continued, as follows:

By Mr. HADLEY:

Q. Mr. Taliaferro, you were asked last evening to indicate the percentages of State and interstate business that would have to be carried on through freight trains, in order to bring about a result of the same expense incident to both kinds of traffic: have you these figures?

A. I have endeavored to illustrate it in this way: assuming that the total ton miles of all freight were 100,000; and 90,000 of those ton miles were due to the operation of through trains, and 10,000 to the operation of local trains, then if ten per cent of the 90,000 ton miles due to through trains consisted of State freight, the tonnage of the local trains must necessarily consist of ten per cent of State business and ninety per cent of interstate business.

Q. That is, the relation between the two classes of freight upon the through freight trains would determine the proportion of tonnage upon the local freight trains?

A. Yes sir.

Q. If in addition to the assumption you made there you would assume that ten per cent of the 100,000 ton miles was

1792 State freight, and 90,000 ton miles was interstate, then what would be the difference in expense, if any, in handling the two classes of traffic?

A. Based on this illustration, I should say there would not be any difference.

Q. That is, if the proportion between the two classes of traffic upon through freight trains is the same as the proportion of the two classes of traffic in making up the total tonnage?

A. I will have to qualify that: except as to the additional terminal service.

Q. Caused by the shorter haul?

A. Caused by the additional use of terminals. The train service I think would be the same.

Q. Using that illustration, and dividing upon the actual division between State and interstate freight that you found in the three days' test of the Missouri Pacific, and making a division upon the same theory that you made the division in that case between local and through trains, what would be the proportion of State traffic handled by through freight trains, applying the results of the Missouri Pacific examination?

A. The figures I have here were based on the showing made by Exhibit 16, of less than carload ton miles of State and interstate freight. The ton miles of State less than carload being about forty per cent of the total ton miles of less than carload freight. Using that as a guide to the character of both carload and less than carload freight carried on local trains, if forty per cent of the
1793 whole State tonnage was carried on local trains, it would still leave 6-2/3 per cent of the total through train tonnage as State freight.

Q. Then that would result in 60 per cent of the entire State tonnage constituting only six per cent of the tonnage of the through trains?

A. Yes sir.

Q. In other words, Mr. Taliaferro, a very small proportion of the tonnage of the through freight trains has to be State freight, in order to maintain the proper relation between the two classes of traffic on that class of freight trains?

A. Yes sir.

Q. What has the proposition of operation, or the information of the man who is connected with the actual operation of trains, to do with determining the question of the relative cost of handling the two classes of traffic?

A. I don't think any of them have ever given it a thought.

Q. Do you mean that the men who direct the operation of trains do not have anything to do with the question of the expense in connection with it?

A. I mean the men actually occupied in handling it do not. They have established customary ways of handling the business, and they give no consideration to whether it is State or interstate business.

Q. You spoke about the question of the relation of the two kinds of traffic upon through and local freight trains, that it might be determined by making a test for a certain period: In what way could it be determined?

1794 A. Eliminating all kinds of expense, that is maintenance and general expenses, and narrowing it down to the conducting transportation. Part of the operating expenses, I think a fair approximation of the cost can be made by determining the proportions of State and interstate business handled on through and local trains respectively.

Q. How can that fact be arrived at? The comparative tonnage on these different classes of freight trains? How would you go out and determine it, if you were managing a railroad, and wanted to make that fact clear to a Court?

A. I don't know that it is practicable, but I think it could be done actually by instituting a test, knowing beforehand just what was to be done, and following all of the business for a given period. In lieu of that, I should think the next best thing would be to take all of the tonnage handled within a given period, and apportion it to through and local trains, on the basis of what might be called "ideal operation"; that is, through trains from one terminal to another, and local trains to and from points between division terminals.

Q. That would be what would be called dividing the two classes of freight as they ought to be handled, or assuming they were handled in the most economical way. But coming down to the question of making an actual determination of that question by the reports of conductors or the men who make up trains, for a certain period; could that be done from the bills of lading?

1795 A. It could be done from the conductors' reports, I think, so far as carload business is concerned. But for less than carloads, it would be more difficult to arrive at it.

Q. But the less than carload business you have already said was a very small portion of the entire tonnage?

A. Yes, sir.

Q. You stated yesterday that you thought the increased expense per ton mile for handling State carloads was fifty per cent greater than the expense of handling interstate carloads, although in less than carloads the conditions were reversed: Then upon a comparison of the two classes of traffic, that is all of the State freight compared with the expense of handling all of the inter-state freight, in proportion to volume, what would you say? Would it be less?

A. It would have the effect of mak-ng all of the State freight cost somewhat less than fifty per cent more than the interstate freight.

Q. That is, in proportion to tons per mile?

A. Yes, sir.

Q. And that would vary according to the amount of less than carload business, would it, Mr. Taliaferro?

A. Yes, sir.

The MASTER:

Q. You are speaking of ideal conditions: Now is it possible in carrying on the business of a great enterprise, like a railroad engaged in interstate traffic, to practically bring into the operation

of such business an ideal condition, either of transportation or of keeping accounts?

A. I think not, sir. I think the roads that are operated to the best advantage are the ones that come nearer to that condi-
1796 tion, but I do not suppose there is a rule or practice of railroads that is not varied from some times, to meet different conditions.

Mr. HADLEY:

Q. The railroads are aiming at ultimate results, rather than the attainment of ideal conditions?

A. Yes, sir, they know that certain methods will produce the best ultimate results. They strive for those methods.

Q. Is that likely to vary to the extent of putting State freight on the expensive trains in disproportionately large amounts, as it is to vary the other way?

A. I don't know that I understand you.

Q. You say that of course no railroad is ever operated ideally in every regard, but they strive to so do it as nearly as possible. Is it not as likely that they would put interstate traffic on the expensive trains as they would to put State traffic on the inexpensive trains?

A. I think so.

Q. And that ideal operation in a general way is what, as you understand it? You have spoken of that matter.

A. As I understand it, it is first of all to make up a train so they will require as little shifting or breaking up as possible; and then to put on the through trains the cars that are going from one divisional point to another, or to a second or third divisional point beyond; and to handle to and from stations between such divisional points all of the business with the local freight trains.

Q. That was the theory you followed in the apportionment of the business of the Missouri Pacific?

1797 A. Yes, sir.

Q. You spoke of your investigation of the opinion of various railroad experts upon these increased cost, and the relations of the two traffics: What authorities in that regard did you investigate and from what actual roads did you secure information?

A. I have not secured information from any individual.

Q. From what Railroad?

A. In former cases?

Q. No, in this case.

A. We have gotten figures, of course, from the Wabash and the Missouri Pacific Railroad's records, and I have had in mind particularly the testimony given in the Burlington case. I have read that. I have not consulted with any operating man in regard to this matter.

Q. This claim in the Burlington case has already been referred to: You have received the report of the Missouri Pacific Railroad, indicating their attitude about the increased cost ratio?

A. Yes, sir, I believe they do go on record on that.

Q. What is that?

A. The State business costs——

Judge SPENCER: The Missouri Pacific statement will show for itself.

The MASTER: It has been referred to in this case, to illustrate, as bringing in a side light as to the questions involved. He may state it.

A. The statement I referred to is the one submitted by the Missouri Pacific Railway Company in this matter. The one
1798 we now have in mind for the purpose of verifying.

The MASTER: That is to say, the Missouri Pacific Railway Company, being complainant in a similar Bill to that here under investigation, furnished to the experts appointed in behalf of the State of Missouri, certain preliminary statements or tabulations; and being one of the experts for the State, you now refer to one of those statements of tabulations furnished by the Missouri Pacific Railway Company?

A. Yes, sir, one of the statements furnished to the State, and by the State turned over to Haskins & Sells.

Mr. HADLEY:

Q. What does that claim?

A. That the State business costs fifty per cent more in proportion to revenue than the interstate business. This is the way the figures worked out.

Q. You put it fifty per cent more with reference to the ton mile?

A. Yes, sir; regardless of the revenue, and not on that basis at all.

Recross examination.

By Judge SPENCER:

Q. Mr. Taliaferro, this ideal operation you speak of must necessarily vary with conditions, doesn't it?

A. Yes, sir.

Q. There are probably no two managements in the country that could operate exactly alike, unless the conditions were the same, could they?

A. That is true.

Q. And there are no two managements or roads in the
1799 country where the conditions are the same at any one hour or any one day in the year?

A. I think that is true.

Q. Then you have not taken into consideration the propriety of diverting the business from local trains to through trains, local business, have you, where for instance there was an extra freight necessary for the operation of the road for a single day, or a delayed train? The management's object would be to get the freight to its destination at the first possible moment, wouldn't it—or it should be that?

A. Yes, sir, but I don't think the local trains are abandoned.

Q. No, not abandoned.

A. They may handle through freight. It would ordinarily be through freight, to save making up and sending out the through freight trains.

Q. But there is no fixed rule by which you could control the operation of railroads in reference to the transportation of local or interstate freight, is there?

A. I think not.

Q. So that must be done subject to the conditions that happen from time to time, as the freight moves?

A. Yes, sir, that is true.

Q. Do I understand you correctly, in assuming that you state that the operations of the trains is no part of the expense of handling the State business?

A. No, sir.

Q. You say that is no part of the expense?

A. No, sir, I did not say that.

1800 Q. You understand that the result we are trying to reach in this case is the cost of doing the State business, don't you?

A. Yes, sir.

Q. And you have made figures showing that part of the State buiness was handled on through trains instead of local trains, haven't you?

A. Yes, sir.

Q. Will you explain to the Court the difference in the cost of handling State business on through trains and handling it on local trains?

A. I haben't attempted to do that at any time.

Q. Suppose you have a carload of furniture going from St. Louis to St. Joseph, and you have another carload of furniture going to Hannibal; and another carload of furniture going from Hannibal to Brookfield; and another going from Brookfield to St. Joseph: There are three carloads of furniture assumed in that question. Then there is one shipment straight through from here to St. Joseph. One of these shipments goes on the through train, and the other three shipments go on the local train: Can you tell the difference in the cost of handling those cars?

A. No, sir, I could not.

Q. Well, then,——

1801 A. What we say is this: That the cost of handling freight on local trains is greater than the cost of handling freight on through trains, but that both classes of freight trains are engaged in doing both classes of business all the time.

Q. Then how does that affect the cost of doing the business? I understand that you found that both classes of trains are handling both classes of business. Now let us take the one, isolated statement, that you are going to handle one car of furniture from St. Louis to St. Joseph: What is the difference in cost whether that is handled on a through freight train or on a local freight train?

A. I should not attempt to say, and I don't believe anybody can say.

Q. Is there any difference?

A. There is more cost in handling a car on a local train between Hannibal and Brookfield, for instance——

Q. Let us keep to this one shipment, St. Louis to St. Joseph, so we can simplify it as much as possible. A carload of furniture given to the local and hauled through to St. Joseph; another car is given to the through train, and is hauled through. Now what is the difference in cost of handling those two cars?

A. I would say that if both cars were going all the way from St. Louis, there would be very little difference in the cost.

Q. Very little difference?

A. Yes, sir, because they are put into the local trains;
1802 every through train has to be picked up by a new engine at each divisional point. Both cars are loaded here, and put into trains.

Q. Both have a terminal?

A. Yes, sir, both have terminal here and one car will get there later than the other.

Q. And both run the same distance and weigh the same?

A. Yes, sir.

Q. If that be true, why is it you make such a difference in the cost of the local business in your figures here, or why is it that you put so much stress upon the fact that some of the State business is done on the through trains? If it does not lessen the cost of doing the State business?

A. It does lessen the cost, because the local trains are handling all the business between divisional points—to illustrate, between St. Louis and St. Joseph.

Q. It would not make any difference?

A. It might make some; it would be longer on the way.

Q. It would be longer on its way?

A. Yes, sir.

Q. The expense of loading a car at the terminal would be the same, wouldn't it?

A. Yes, sir.

Q. And the number of miles and the number of tons being the same, there would be no difference in the cost in that respect, would there?

A. Only as the cost of handling the two classes of trains varied.

Q. What I want to get at, Mr. Taliaferro, is, is it the
1803 cost of handling the local business that you are basing your testimony upon?

A. Just now I was talking about the cost of handling the trains.

Q. Can you tell the court the additional cost of bringing that car of furniture by a local train as against the cost of bringing it on a through train?

A. From St. Louis to St. Joseph?

Q. Yes.

A. No, sir.

Q. Can you do it by taking the per ton per mile basis or any other basis?

A. It could be estimated. You cannot do it in any other way.

Q. Can you estimate it on the ton mile basis so as to give us any idea of the extra cost?

A. I would say that in a case of that kind it would cost five to ten per cent more.

Q. Five to ten per cent more on the local train?

A. Yes, sir.

Q. Not to exceed that, you think?

A. Not in my judgment.

Q. Can you tell of what that five to ten per cent would consist?

A. Principally of the wages of the crew handling it. That is additional service. Of course, the through train would have the same service.

Q. Anything else?

A. That is all I have in mind.

1804 Q. Then your idea of the cost of State business moving on the local trains as compared with the cost of moving it on through trains is in fact a mere name, without much distinction, isn't —? The cost is practically the same?

A. No, sir. When you consider that the local trains are doing the business for the unimportant stations, and doing the shifting for those stations, it makes their whole cost very different.

Q. Let me then take a local train of ten tons, that goes fifty miles, loaded with furniture; and the law here says that the rate shall be eight cents per hundred, which would be $1.60 per ton. That going fifty miles, according to your figures would be one ton five hundred miles—ten tons fifty miles would be one ton five hundred miles?

A. Yes, sir.

Q. And that rate of $1.60 per ton (I call your attention to it in this book).

A. Yes, sir.

Q. Take ten tons going one hundred miles, and the law increases that rate from eight cents to ten cents per hundred pounds; that would be the equivalent of one ton one thousand miles, wouldn't it?

A. Yes, sir.

Q. And it would be at the rate of $2.00 per ton?

A. Yes, sir.

Q. Take ten tons going one hundred and fifty miles; the rate would be twelve cents per hundred pounds; and that would be equivalent to one ton fifteen hundred miles, wouldn't it?

1805 A. Yes, sir.

Q. We have this proposition, then: ten tons fifty miles, or one ton five hundred miles, at $1.60 per ton. We have the next proposition, ten tons one hundred miles at ten cents per hundred or $2.00 per ton. And ten tons one hundred and fifty miles at twelve cents per hundred, which equals one ton fifteen hundred miles at $2.40. Now we have one ton going three thousand miles, in the proposition I have assumed?

A. Yes, sir.

Q. The average rate on that, and that is what you do, you average the revenue per ton per mile, don't you?

A. Yes, sir.

Q. The aggregate of those three shipments amounts to $6.00, and dividing it by three gets an average of $2.00 per ton, doesn't it?

A. Yes, sir.

Q. Under the statute you take ten tons three hundred miles, a long haul, and that is equal to one ton three thousand miles, too, isn't it?

A. Yes, sir.

Q. And the rate on that is sixteen cents per hundred or $3.20 per ton—you understand that, don't you?

A. Yes, sir.

Q. You have hauled one ton here, by hauling it different distances in the State, and when you figure it down the proposition is that you have one ton hauled three thousand miles, with a
1806 revenue therefrom of $2.00 per ton. Then you take another ton and you haul it three thousand miles and the revenue is $3.20 a ton. You have taken the average cost per ton and you found it to be $2.00 per ton. Now take one ton without reference to the short hauls and haul it the same distance, and under the statute you are allowed $3.20 for it. That is hauling those ten tons three hundred miles, under the statute.

Now, I want you to tell me, Mr. Taliaferro, how did you get at the cost of doing that local business, the three shipments, one of fifty miles, one of one hundred miles, and one of one hundred and fifty miles? You have reduced it, as I understand, in your computation, to one ton of three thousand miles, for instance. You have also made the average reduction of the cost per ton per mile?

A. There are no tons per mile figures there.

Q. Not yet. But that is the way you have made your calculations, isn't it? You have taken all the tons hauled in the Missouri Pacific case?

A. Yes, sir.

Q. And all the revenue received therefrom, haven't you?

A. Yes, sir.

Q. And you divided the tons into the amount of revenue, haven't you?

A. Yes, sir.

Q. And in that way you got the revenue per ton mile, didn't you?

A. Taking the ton miles and dividing them into the revenue.

Q. Taking the ton miles and dividing them into the reve-
1807 nue you then get the cost per ton per mile, don't you?

A. You get the revenue per ton per mile.

Q. I want you to explain to the Court how that enables you to arrive at the cost per ton per mile?

A. It doesn't.

Q. Then your figures do not show or attempt to show the cost per ton per mile of doing this State business?

A. Our testimony is based on that. The whole thing is based on this, Judge Spencer: The testimony goes to show that a certain class of business is done more cheaply than any other class. And that is based on an average, an estimate, and no figures. But that is the starting point. Now——

Q. But I want to know——

Gen'l HADLEY: Let him finish.

Judge SPENCER: Let him answer my question first.

Gen'l HADLEY: I submit Mr. Taliaferro should be permitted to finish his answer first.

Judge SPENCER: I only want an answer to my question.

The MASTER: We will get along, but be careful to let the witness answer as he may, and do not interrupt him.

Judge SPENCER: When he is answering the question, of course; but I have a right to object to his answering something that is not the question.

I asked him how, after he had arrived at the revenue per ton per mile, in what manner did that ascertain the cost per ton per mile?

A. I say it has no relation to the cost per ton per mile.

Q. It has no relation to the cost per ton per mile?

1808 A. No, sir. I think the only proper way to illustrate that is to figure out three thousand ton miles on the $1.60 rate only; and then take the next rate and do the same thing, and then take the third one and do the same thing.

Q. Yes, that is what I am asking you. But in this statement I have made to you, it is perfectly proper, isn't it, to say that you have hauled one ton three thousand miles? That is the way to reduce the ten tons fifty miles; ten tons one hundred miles; and ten tons one hundred and fifty miles? That would be one ton three thousand miles, wouldn't it?

A. Yes, sir.

Q. There is no trouble about that, is there?

A. In averaging the thing up, no, sir.

—. Ten tons three hundred miles is equal to one ton three thousand miles, isn't it?

A. Yes, sir.

Q. Then we have hauled two tons here: One of them three thousand miles at a certain rate, and the other one three thousand miles at a different rate, haven't we? In other words, the law authorizes the Railroad Company in making the run from here to St. Joseph, which we will assume for the purposes of this question to be three hundred miles, to charge a rate of sixteen cents per hundred or $1.60 per ton. So a ton from here to St. Joseph, straight through for the three hundred miles haul, would be at the rate of $3.20?

Now you have hauled a ton of freight to three different points between here and St. Joseph, but finally reached St. Joseph, at the rate of $2.00 per ton, haven't you?

1809 A. Oh, no, sir. You must use the first rate in every case, when you do that. It is a new ton every time.

Q. You must use the first rate?

A. Yes, sir. You cannot haul it one hundred miles at one rate and then haul it another one hundred miles at a lower rate, and consider it new shipments all the time.

Q. You mean you must take the eight cents per hundred every

time it stops; the ten tons reaches it- destination, and it starts again as a new shipment?

A. Yes, sir. That would make $4.80 for that ton three hundred miles.

Q. We have taken a shipment here of ten tons fifty miles from St. Louis, and the statute says we shall have eight cents per hundred; that is equivalent to one ton five hundred miles, isn't it?

A. Yes, sir.

Q. Now we start with ten tons one hundred miles from St. Louis and the statute says we shall have ten cents per hundred on that?

A. And that is the one I should have made my illustration on, which would earn $6.00 as against the one earning $3.20.

Q. Therefore, the moving of the local ton has earned three times as much as the other one?

A. Yes, sir.

Q. You put the earnings of those two tons together, when you go to work up your figures as to results per ton per mile?

A. Yes, sir.

Q. And you put the number of miles together?

A. Yes, sir.

1810 Q. In doing that you reach the result that the local business that has been handled fifty, one hundred and one hundred and fifty miles, has been handled on the same revenue basis that the other business has been handled, per ton per mile, don't you?

A. I don't understand that, Judge Spencer. We average the revenue; it has that effect.

Q. So far as the result of your figures is concerned, it has cost exactly the same to move one ton, no matter what the freight was, that it did to move another ton?

A. You are talking about earnings?

Q. Yes, sir, this is earnings.

A. Yes, sir, that is undoubtedly reduced to averages.

Q. Did I understand you to say it has no reference to the cost of handling the business.

A. Yes, sir, I say the cost is not dependent upon the revenue in any way.

Q. Didn't you reduce it to cost per ton per mile?

A. We know the revenue averages so much per ton per mile, and all expense averages so much per ton per mile.

Q. But how does that reach the expense of the local business?

A. That, of course, is a matter partially of opinion, as I see it; and largely dependent upon the manner in which the business is done.

Q. Then it is a question for experts?

A. But not entirely, I don't think.

1811 Q. Can you give me any better answer to the question as to what it cost to do the local business per ton per mile than you have?

A. I haven't given any that I know of, this morning.

Q. Have you given any opinion as to what it would cost to do the local business in Missouri, per ton per mile?

A. No, sir.

Q. Are you able to do it?

A. Only basing it upon the total cost of doing so much business; not just as an abstract proposition.

Q. As an abstract proposition you are not able to give it?

A. No, sir, not at all.

Q. On the cost of operating local trains, you heard Mr. Stewart of the Erie road testify in Chicago?

A. Yes, sir.

Q. You remember him?

A. Yes, sir.

Q. You know he is a man of large experience in railroad matters?

A. Yes, sir.

Q. An older man than you?

A. Yes, sir.

Q. Would you regard his judgment as to the ideal operation of a system of roads as better than yours?

A. Yes, sir.

Gen'l HADLEY: I object to having this expert pass his judgment upon the ability of another expert.

Judge SPENCER: He says he would regard the opinion of
1812 the other man as better than his own.

The MASTER: I think that is proper cross examination.

Redirect examination.

By Mr. HADLEY:

Q. Did you understand that Mr. Stewart of the Erie has applied any different theory of ideal operation than you have adopted in the Missouri Pacific?

A. I don't remember that he had anything much to say on that subject.

Q. Do you remember Mr. Howard Elliott's testimony, who was examined particularly on that?

A. I think he said it has been a long time since he had had anything to do with the operation directly, in Missouri, and that he didn't know how that was done.

Q. Do you remember that he testified how he thought it ought to be done?

A. No, sir, I don't recall his testimony distinctly on that point.

Q. You say the question of hauling one ton, or ten tons three hundred miles or one ton three thousand miles, is not a subject of definite determination, so far as the comparison of the two shipments is concerned, as I understand you?

A. Yes, sir. I couldn't do it.

Q. And the cost of operating local freight trains as compared with the cost of operating through freight trains, as I understand you, is not a question you would attempt to give any definite statement upon?

A. That is correct.

1813 Q. You simply say the cost of operating local freight trains is more?

A. Yes, sir.

Q. But when it comes to State traffic and through traffic, then the proportion of the two classes of traffic upon the expensive or the inexpensive freight trains, does that enable you to determine the proportionate cost per ton per mile of State and interstate business, so far as conducting transportation is concerned?

A. I should say that comes nearer than any other basis upon which you could form some opinion.

Q. Your figures upon the State and interstate business do not take in merely one shipment; they take in the entire State and interstate business for a certain period?

A. Yes, sir.

Recross-examination.

By Judge SPENCER:

Q. In making up your figures, suppose a car of grain was delivered at Kansas City by the Santa Fe railroad to the Missouri Pacific: How would you treat that business? If the Missouri Pacific brought it on to St. Louis how would you treat that car? As State or as interstate business?

A. That depends on where it originated.

Q. It originated in Kansas, but is brought by the Santa Fe to a point in Missouri, and there delivered to the Missouri Pacific which brings it on to St. Louis: How do you treat that car? As State or as interstate?

A. To stop at St. Louis?

Q. Yes, sir.

1814 A. We put that into the interstate, of course. But if we were making up those figures again, we would put it into what is called "second class interestate," because it stops in Missouri.

Q. If a car were delivered at Sedalia from another railroad to the Missouri Pacific, and brought to St. Louis, how would you treat that, as second class interstate, provided it originated out of Missouri?

A. Yes, sir.

Q. That is the way you have computed?

A. Yes, sir. We were governed entirely by the point of origin and point of destination.

Q. You recognize, don't you, that the statute gives eight cents per hundred for the first fifty miles in the transportation of freight?

A. On what?

Q. On furniture, for instance—what we have been talking about?

A. $16.00 for a 20,000 pound car, is my recollection.

Q. And two cents per hundred additional for the next twenty-five miles?

A. I believe so.

Q. You understand, then, that the law itself recognized the terminal charge and gives eight cents for the first fifty miles, when it gives only two cents more for the next twenty-five miles?

A. Yes, sir. Of course the shorter the haul the higher the revenue per ton per mile.

1815 Q. And that is recognized in all the statutes of all the States, so far as you have examined, isn't it?

A. Yes, sir.

Q. And taking those ten tons fifty miles at eight cents per hundred, which you say is $1.60 per ton.

A. Yes, sir.

Q. That is divided on the basis of at least four cents for the terminal charge—fifty cents, isn't it?

A. I don't think that any division is attempted to be considered as between cost.

Q. The first fifty miles they give eight cents?

A. Yes, sir.

Q. And the second fifty miles they give four cents additional, don't they?

A. Yes, sir.

Q. So the difference between the four cents and the eight cents is four cents?

A. Yes sir.

Q. And there would be no theory that you could recognize that additional compensation, except upon the cost of the terminal?

A. I think that is the underlying principle.

Q. So it is at least fifty cents of all these rates in Missouri, starting?

A. How is that?

Q. The revenue for the first fifty miles is twice as great as the second fifty miles on all these shipments?

A. I don't know.

Q. It is in this instance?

1816 A. Yes, sir.

Redirect examination.

By Mr. LADD:

Q. Take the case of a shipment from Cincinnati, destined for Topeka, Kansas, a through shipment. It comes over the Baltimore & Ohio Road to St. Louis, and there it is taken by the Missouri Pacific Road and carried to Kansas City, and there it is taken by the Union Pacific Railroad and transported to Topeka and delivered to the consignee: In the preparation of your Exhibits Nos. 16 and 17 (if those are the correct numbers) was a shipment of that kind taken into account?

A. Yes, sir, every pound of freight that passed over the Missouri rails.

Q. So you did not confine yourself to freight that was received or delivered at stations on the Missouri Pacific.

A. No, sir.

The MASTER:

Q. That is, as I understand, the chief difference between Exhibits 16 and 17; Exhibit 16 has reference only to freight received?

A. Yes, sir, and only for the reason that we left the business going

to foreign lines for the last; that is a stage of the work that we left for the last.

1817 Mr. E. M. FISHER, recalled testified as follows:

Direct examination.

By General HADLEY:

Q. Mr. Fisher, you testified before in this case?

A. Yes, sir.

Q. You gave a statement of your experience in the matter of railroad accounting?

A. Yes, sir.

Q. You have heard the testimony that has been so far adduced in the Burlington case?

A. Yes, sir, most of it.

Q. Have you given some special attention and investigation to one of the questions of controversy in this litigation, as to the relative cost of doing State and interstate freight business?

A. I have.

Q. What investigation have you made of that subject?

A. Well, I have made estimates of the general cost of hauling and the tonnage, and so forth, to form an opinion as to the relative cost between State and interstate business.

Q. You read the testimony of experts in other cases?

A. I have, yes, sir.

Q. You have read the decision of the Kentucky Board of Railroad Commissioners in a similar matter?

A. Yes, sir.

1818 Q. Have you read any of the testimony in the Nebraska and North Dakota rate cases?

A. Yes, sir.

Q. Then if I understand you correctly you have made the matter a question of both investigation and study?

A. Yes, sir.

Q. Have you made some special study and investigation of the litigation of the Burlington Railroad in the State of Missouri in reference to the commercial and topographical conditions?

A. Yes, sir.

Q. Particularly in reference to the divisions of the road: Are you familiar with them?

A. Fairly so.

Q. How does the question of freight divisions affect the question of handling freight?

A. It affects it I think very materially. You mean the operating divisions for freight trains?

Q. Yes.

A. Yes, sir.

Q. Explain that in detail, Mr. Fisher. You mean as to whether the freight is handled upon through or local freight trains?

A. Yes, sir, the cost, of course, of handling freight on through freight trains, operating between two freight terminals, is less than

it would be in operating in a purely local train. When I say local train I mean way freight.

1819 Q. That is the railroad designation of the technical term, is it, way freight?

A. Yes, sir, way freight.

Q. The result of your experience and study and knowledge of railroad operation, what do you say as to the relative cost of operating local freight trains and through freight trains, or carrying a ton of freight a mile on one class of train as compared to the same service on the through freight train?

A. The way freight train, the expense of hauling one ton a mile on the way freight would cost more than it would on the through freight train.

Q. Take the theories that have been advanced in this case, that it costs from three to seven times more to do the State freight business than the interstate business in proportion to revenue, have you given that question investigation and study?

A. Do I understand that question three to seven times as much to handle State business as it does to handle interstate, in proportion to revenue?

Q. Yes.

A. It cannot possibly cost that, or anywhere near it.

Q. What is your opinion upon that theory?

A. In the first instance, the revenue per ton per mile on the State business is greater than the revenue per ton per mile on the interstate business, and the additional expense is very little more in handling State than it would be on interstate business. The only

1820 additional cost, for handling both State and interstate in way freight trains and through freight trains. There is no regard in making up a train, as to whether the business is State or interstate business. It is a matter of operating conditions and the freight that is offered for transportation. The only additional expense would be possibly some additional terminal expenses. In the matter of the State shipments as compared with the interstate shipments, that is about all. The actual expense of hauling after leaving the terminal would be the same.

Q. What is your opinion, Mr. Fisher, as to the increased cost per ton mile of doing State as compared with interstate business?

A. There is no increase except in the terminal expense.

Q. And what would you estimate that to be?

A. I should say—well, it would cost just twice as much on the interstate as on the State business—that is, assuming that there is only two handlings of the shipments, you know. There is two in the State for the State business and one for the inter-state business.

Q. Can you express it in percentages? Have you figured that?

A. You mean the terminal charge?

Q. No, I mean what is the increased expense per ton mile for the handling of an average ton mile of State freight as compared with the expense of handling the average ton mile of interstate freight?

A. That would be ten to twelve per cent.

1821 Q. I believe it appears from Exhibit 1 in this case that the revenue derived from the doing of State freight business is

20 per cent of the revenue derived from the doing of all the freight business, in 1905?

A. Approximately that.

Q. Have you made an investigation to determine the relative revenue per ton mile on State and interstate freight on the Burlington road?

A. Well, only to a certain extent. I have figured the tons per mile based on the rates in effect.

Q. That is what I mean. Are they larger or smaller on State as compared with interstate business?

A. Very much larger revenue per ton mile on the State than on the interstate business.

Q. How much larger would you say?

A. Well, I should say nearly 50 per cent larger. For instance, on a through shipment originating say at Kansas City and going into the southwest territory, contributing the same tonnage, the revenue on the interstate shipment would be only about forty per cent as against sixty per cent for the State shipment. That is to say on another shipment of the same tonnage coming from say Kansas City to St. Louis or St. Louis to southwest territory, the revenue for the same distance in Missouri would be only twice what it would be on the interstate shipment.

Q. Then the average return on the average ton mile on State freight would be twice as much as on the average ton of in-
1822 terstate freight which would be apportioned to Missouri?

A. Approximately, yes.

Q. That would figure, in your opinion, 10 per cent of the entire freight tonnage of the Burlington was State freight and 90 per cent was interstate?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir, that is correct.

Q. Then if ten per cent of the tonnage handled by through freight trains was State tonnage, what would you say so far as the cost of conducting transportation is concerned, as between the two classes of traffic?

A. Ten per cent of the entire tonnage is State freight.

Q. You gave that as your opinion from a comparison of the revenue?

A. Yes, sir.

Q. Assuming 10 per cent of the ton miles of freight hauled by through freight train was State freight, then, what would be the relative portion of State and interstate freight on the local or way freight trains?

A. It would be the same proportion.

Q. And then so far as the expense of conducting transportation is concerned, what would be the relative cost of doing State business as compared with the cost of doing the interstate business?

A. It would be one-tenth.

Q. It would be simply divided according to the volume?

1823 A. Yes, sir, divided according to the volume of traffic.

Q. That is, the average cost per ton mile would be the same?

A. It would be the same.

Q. In case the same proportion of the two classes of traffic was maintained on the two classes of freight trains that the two classes of traffic bore to the total: Is that your conclusion?

A. That is my conclusion.

Q. What do you say with reference to your investigation of the facts in the Burlington case and your knowledge of all these conditions entering into the handling of freight, as to whether 10 per cent of the tonnage of through freight trains handled, is State freight?

A. I should say it would be about that.

Q. What facts would cause you to form that opinion?

A. My opinion on that is based upon the statements of the revenues, and a general examination of the billing of the freight and the volume of the traffic. On the Burlington, on the branch lines, between Iowa and Missouri I think there are some nine branch lines operating between Iowa and Missouri, on the northern border. Nearly all of those lines are operating train- that pass from one state to the other. And they are handling, of course, State and interstate business. The proportion in there is much greater on the interstate so far as local trains are concerned than it is within the State. Of course the east and west business on the main lines, the proportion of
1824 traffic there is, as I stated, about 90 per cent of the interstate and 10 per cent of the State traffic.

Q. Does the fact that the commercial centers of Missouri which the Burlington road touches are situated upon the borders of the State, and the fact that it is a general commercial proposition that people in Missouri trade in Missouri cities—do those facts have any effect in having the through business handled on through freight trains?

A. Yes, sir.

Q. Both shipping in and out of the commercial centers?

A. Yes, sir.

Q. Does the fact that the freight divisions upon the Burlington, Kansas City to Brookfield, Brookfield to Hannibal, Hannibal to St. Joe and St. Joe to Hannibal—does that contribute to the handling of a larger proportion of the State business on through freight trains than you might find ordinarily?

A. Yes, sir, naturally.

Q. From all these investigations do you feel it is a conservative estimate than 10 per cent——

Judge SPENCER: Hadn't you better ask him what would be a conservative estimate?

General HADLEY:

Q. What would you say would be an entirely conservative estimate of the freight carried on through freight trains, as between State and interstate freight?

A. I think it would work out just about on the proportion I gave a while ago, 10 per cent.

1825 Q. That is the relation of the two traffics in making up the total?

A. Yes, sir, in making up the aggregate tonnage.

Q. What do you say is the relative cost of doing State and interstate less than carload business? Did you make any differentiation between these two classes of business, carload and less than carload?

A. In the cost of transportation?

Q. Yes.

A. Yes, sir, the cost of transportation of less than carload business is much greater than carload business.

Q. Compare less than carload State freight with less than carload interstate freight.

A. I should say the less than carload interstate would cost more to handle than State shipments, on account of the longer haul, as a rule, that the interstate shipment would have, and necessarily more handling of the shipments enroute.

Q. You considered that element in your opinion, that it cost 10 to 12 per cent more per ton mile to do State than interstate business?

A. Yes, sir.

Q. It was the average on the less than carload and the carload, the two classes of traffic?

A. Yes, sir.

The MASTER:

Q. I don't know that I quite understand you. You say it would cost more to handle broken freight, or freight in less than carload lots, if it is interstate business than it does to handle the same

1826 class of freight in State business?

A. Yes, sir, I think so. On the interstate shipments the haul is usually greater than it is on the State shipments. Therefore, necessitating oftentimes the handling of probably three to four, sometimes four times, of the shipment. From the point it would reach the State until it reached its destination. But State shipments are shorter hauls and therefore, as a rule, are handled only twice.

General HADLEY:

Q. That is, the cars have to be unloaded oftener?

A. Yes, sir, unloaded and loaded.

Q. So the conditions that add 10 or 12 per cent to the cost of handling State business, so far as carload shipments are concerned, would be reversed when it comes to less than carloads?

A. Yes, sir, just the reverse.

Q. In proportion to revenue or the expense to produce a dollar in earnings, in State as compared with interstate business, which do you say is the greater, on the basis of the charges made by the Burlington Railroad Company?

A. I should say the expense would be greater in proportion to revenue on the interstate business, on account of the greater revenue derived from the State shipments.

Q. Have you prepared a number of examples to demonstate that proposition, from actual shipments at the rates charged by the Burlington Railroad?

A. Yes, sir.

Q. Is this the statement of them (handing paper to witness)?

1827 A. Yes, sir.

General HADLEY: I will offer in evidence in that form, it is just a comparison of revenue from State and interstate shipments.

Q. You testify they are all correct?

A. Yes, sir, they are all correct.

Judge SPENCER: Subject to our objection, it may go in. We have not had an opportunity to examine it yet.

The paper referred to is marked Defendant's Exhibit 28.

(Said paper is in the words and figures following, to-wit:)

1828 General HADLEY:

Q. You have examined accounts of the Burlington Railroad, have you, Mr. Fisher, for the purpose of determining the correctness of the items of expense that enter into and make up the total?

A. Yes, sir.

Q. What is your opinion, from an examination of this matter, as to whether the operation of local freight trains would be discontinued successfully, from the standpoint of railroad operations, if the doing of State freight business was entirely abandoned?

A. The operation of way freight trains?

Q. Yes, sir.

A. It could not possibly be done. If they handled any State business at all they would have to operate the way freight just the same, because the volume of traffic to the local stations would be such on interstate business that they would be compelled to operate the way freight trains.

Q. Would that apply to freight coming in as well as freight going out?

A. Yes, sir, inbound and outbound, both.

Q. Taking the expense incident to the maintenance of equipment and right-of-way, can you say as to whether any of those expenses could be avoided if they ceased doing State business entirely?

A. Very little, if any. They would have to maintain their equipment of track to handle the interstate business just the same, whether they handled State business or not.

Q. And how about the necessities of maintaining this
1829 equipment, and the stations, etc., for the passenger traffic?

A. They would have to maintain them just the same.

Q. Here is an item of station service: Is there any portion of that expense that could be eliminated by abandoning State business?

A. Only such proportions of labor at terminals, probably, in the large commercial centers, as could be reduced on account of the reduction in the volume of their traffic; that is all.

Q. Just on account of the reduction in volume?

A. That is all.

Q. Is there any greater proportion of that expense, in your opinion, attached to interstate than to State business, in addition to the volume?

A. No, sir, nothing additional.

Q. Take train service: How do you think that should be apportioned?

A. The cost of train service cannot be apportioned on the basis of the tonnage, of the State and interstate business.

Q. Simply in reference to the volume?

A. Yes, sir, to the volume of the traffic.

Q. How about engine service?

A. The same thing.

Q. How about what are known as contingent expenses, damage and loss of freight, stock killed, personal injuries, etc.?

1830 A. There might be some slight additional expense in loss and damage to freight, but if so it would be very slight, as between State and interstate. On personal injuries, I do not think there would be any difference, because it is undoubtedly true that there is more expense for personal injuries on way freight than on through freights; but that would be governed also entirely by the volume of the traffic.

Q. Maintenance of equipment, I believe you have testified to?

A. Yes, sir.

Q. Maintenance of road and structures would be the same?

A. Yes, sir, the same thing.

Q. General expenses: What class of traffic, State or interstate, should bear the larger proportion of that expense?

A. Proportionately there would be no difference any further than the relative percentage of the volume of traffic, in that case. The volume of traffic would be governed.

Q. Taking the matter of advertising and paying the expenses of solicitors and freight agents: Is that expense usually incident to what class of traffic?

A. That would be practically all of it for through traffic.

Q. That is the longer haul?

A. Yes, sir, competitive business.

1831 Cross-examination.

By Judge O. M. SPENCER:

Q. You are not an operating man, are you?

A. I have had something to do with operation. I have been Car Service Agent and charge of the distribution of cars.

Q. Have you ever operated a road in any official capacity?

A. No, sir, not in any operating department. I have been Car Service Agent, handling the movement and distribution of cars.

Q. You would not regard yourself as an expert in the operation of a railroad, would you? That is, the economical operation of it, or the practical operation of it?

A. Not altogether. I know quite a good deal about it, naturally.

Q. You have seen it done?

A. In my experience as Car Service Agent and Traveling Auditor; the years I was Traveling Auditor I have been around in the stations, and ridden on the freight cars, and all that sort of thing.

Q. I wanted to know if you were asked to go down to the Burlington Railroad Company's office, and asked to take charge of the operation of its trains for the State of Missouri in a proper and economical manner, whether you would feel competent to do that?

A. I would not hesitate to take the position of Division Superintendent, and take my chances on operating the trains over their divisions as well as most of their men.

Q. Although you have never been called upon to do that?

A. No, sir.

1832 Q. You are simply one of the accounting experts in this case, aren't you?

A. Yes, sir.

Q. Have you familiarized yourself, as an expert, by studying the question and reading up on the question of the cost of transportation?

A. More or less all my life. In the accounting department all the items of expense of transportation, and all other items of expense are usually compiled from the Auditor's office.

Q. Have you read any authorities on the subject?

A. I have read some of them, yes, sir; and more especially from my experience of twenty-two years that I was in the business. There is where I gained my experience and knowledge.

Q. You have read nothing on the subject? Anything that you can name now?

A. I have read some of Pearce's articles on maintenance of way and structures.

Q. Your idea is that the rate in Missouri is about fifty per cent higher on local than it is on interstate freight?

A. It is nearly twice as much.

The MASTER:

Q. The rate on what?

A. The revenue of State and interstate is nearly that.

Mr. SPENCER:

Q. You gave an illustration of a shipment to St. Louis and then north-west, where you said it was about fifty per cent higher, coming from Kansas City?

1833 A. Yes, sir, it is about that. Say sixty per cent. In other words, a shipment going through to the north-west territory, the revenue at Kansas City would be forty cents and the local rate between Kansas City and St. Louis would be sixty cents—relatively or approximately that.

Q. You stated, if I understood you correctly, that the cost of doing the carload State business was greater than the cost of doing the interstate carload business?

A. Yes, sir, somewhat.

Q. Then you also stated that the cost of doing the interstate less

than carload business was greater than the cost of doing the State less than carload business?

A. I think so, yes, sir.

Q. And you gave as your reason for the converse of those two propositions, that the unloading of the interstate less than carload business is an item?

A. The handling of it, you know, in the terminals. For instance, you get the less than carload shipments coming from the East, at Hannibal, and they will probably do in the way freight train from Hannibal coming to say St. Joseph or Kansas City. It may go to Brookfield, where it has to be handled; transferred at Hannibal, as a rule and every time that shipment is handled it of course increases the cost of transportation.

Q. But would it be handled any oftener than a shipment from Hannibal to Kansas City, on the local?

A. If going between the same points, the handling would be the same on State and interstate; but the volume of less than car-
1834 load shipments, and the distance hauled, is greater on the interstate than on the State. The State shipments are usually a shorter haul than the interstate.

Q. That is why we supposed it was more expensive for the shorter haul, isn't it?

A. Not necessarily.

Q. Let me get at this: Unless it is more frequently handled it certainly does not cost any more to haul less than carload interstate than less than carload State shipments?

A. If it is handled the same number of times, and it is the same tonnage, the expense is just the same. There can be no more expense in handling State than interstate, or interstate than State. It would be just the same.

Q. There must be two handlings, one at the point of origin and one at the point of destination, on State less than carload business?

A. Yes, sir.

Q. And not necessarily more than one on the interstate less than carload shipment, in Missouri?

A. Practically two. It depends altogether on your terminal. Now take the Burlington, for instance; their freight terminals happen to be right on the border of the State. For instance St. Louis is the end of a freight terminal; Hannibal is the end of a freight terminal; St. Joseph is the end of a freight terminal; Kansas City is the end of a freight terminal.

Q. Suppose a car was going from St. Louis to Omaha, loaded with interstate less than carload shipment, it would go to Omaha without any extra handling, wouldn't it?

1835 A. That would depend altogether on how much they had of the tonnage going from that particular town.

Q. All I want is the basis upon which you fix your opinion, and if those conditions do not arise, that is, if it is not unloaded as you assume, then it would not cost more to do the interstate less than carload business, would it?

A. No, sir.

Q. And you have no practical knowledge of how it is handled on the Burlington, have you?

A. Not especially so.

Q. No actual knowledge on that subject?

A. No, sir.

Q. You are simply testifying as to how you would handle it if you were running it?

A. I am testifying to what I know how it is usually handled.

Q. Not on this road?

A. Not on this road specially. So far as that is concerned, the methods are very similar. The situation of the Burlington on the borders here would necessitate more often handling of less than carload business than is possible in other places.

Q. How would you arrive at the cost of doing the State business, Mr. Fisher, as compared with the cost of doing the interstate business?

A. The only way you could do that would be to ascertain the tonnage of the State business, through and way freight; and interstate through and way freight; that would be the only way, to get
1836 the exact tonnage, and divide the expense on the basis of the tonnage, the volume of traffic.

Q. That is, on the tonnage?

A. Yes, sir.

Q. Without regard to the revenue?

A. Without regard to the revenue.

Q. And if I understand you, then you get the amount of tonnage of State freight?

A. Handled in way freight trains.

Q. Handled by State or way freight trains?

A. Yes, sir.

Q. And the volume of tonnage handled by interstate trains in Missouri?

A. Yes, sir.

Q. And you think the cost of the one as compared with the cost of the other, bears the same relation as the volume of tonnage bears to the other?

A. That is in train service. Of course the only question where there could be any difference between State and interstate freight, would be the terminal charge.

Q. What per cent would you say that would be?

A. Well, it would not be very much. It would be ten or twelve per cent more.

Q. On account of the terminal?

A. Yes, sir, the terminal expense per ton.

Q. All of your opinions expressed in this case, as an expert, as to the relative cost of State and interstate carload business, and State and interstate less than carload business, and other character
1837 of freight, such as overhead freight, or second class freight, originating in Missouri and passing out of the State to some other point, or coming from some other point and terminating in the State of Missouri, is based upon your division of the expense of

doing the local business as compared with interstate business, comparing the aggregate amount of tons in the local business with the aggregate number of tons in the interstate business?

A. That is the only basis upon which you could divide it. It is as near actual as could be determined. It is only approximate anyway, you know.

Q. That does not give it with mathematical certainty, does it?

A. No, sir.

Q. You cannot rely upon that as an absolute test of the relative cost or expense?

A. Nearly so, I think.

Q. That in your opinion is the most correct method of ascertaining the expenses of the local business?

A. Yes, sir, it is the only basis. The tons hauled is about the only basis I can see, and is nearest to the absolute actual basis, upon which to divide the expenses.

Q. That is the entire volume of business you are talking about now, Mr. Fisher?

A. Yes, sir.

Q. Let me take one hundred tons of freight, hauled from St. Louis to St. Joseph—you know there are one hundred tons hauled today?

A. Yes, sir.

Q. How do you take that fact and arrive at the expense
1838 of hauling those one hundred tons?

A. From St. Louis to St. Joseph, you say?

Q. Yes.

A. What is the proportion of the interstate and the State traffic in them?

Q. I make this just State traffic.

A. You mean to ascertain that?

Q. Yes.

A. I don't know that you could ascertain what it would cost to handle that particular one hundred tons.

Q. Why?

A. Because you are handling other traffic all over the State, and between all stations, and you have to take your entire expenses.

Q. That makes it all the more complex; but I want to relieve it of that complication, if possible; and so we are handling local business now to the amount of one hundred tons today from St. Louis to St. Joseph, under the local rates charged—call it agricultural implements, and then we will know what the rate is. Now do you take the volume of business and the rate per ton, and ascertain the cost of doing it per ton?

A. I do not use the rate per ton at all, or the revenue, in my calculations.

Q. You did not use the revenue?

A. No, sir.

Q. You used just the volume of business?

A. The tonnage handled.

Q. Compared with what?

1839 A. State and interstate. To say what any particular shipment will cost to handle is absolutely impossible. It is just as impossible for you to go into a Department Store and try to ascertain what they make on any one item of the business they handle.

Q. That is just what I am trying to get at: There is a certain aggregate number of tons of freight handled in Missouri, isn't that true?

A. Yes, sir.

Q. And by taking that aggregate number of tons handled in Missouri, you have divided it into the local business or State business, and interstate business, haven't you?

A. Yes, sir, take it that way.

Q. And you found 90 per cent interstate business—or 80 per cent I believe the figures show; and 20 per cent——

A. That is revenue.

Q. Then on the volume of business how much is it? 90 and 10?

A. Yes, sir.

Q. Take 90 and 10; Now we have 90 per cent of this volume of business interstate and 10 per cent of it State: Now how did you take those two figures and arrive at the cost of doing the State business and that of doing the interstate?

A. I took the aggregate expense of handling the aggregate tonnage; you would take the percentage that the local tonnage would bear to the total tonnage handled in the State, with a small additional expense, possibly, for additional terminals.

Q. That is, you take the aggregate expense?

1840 A. Yes, sir.

Q. And you take 90 per cent of the expense practically and assign it to what?

A. To the interstate business.

Q. And 10 per cent to the State business?

A. Yes, sir.

Q. Now that does not allow any extra cost for doing the State business, does it?

A. No, sir, I said that in the State business there would be some additional cost on account of more terminal handling; not very much, but that would have to be figured out on the basis of the tonnage also.

Q. We have the tonnage now in both instances. What I wanted to find out, if I could from you Mr. Fisher, was whether there was any actual connection between the expense of doing the State business—whether there were any grounds that justified you in dividing the expense of doing the business on the same percentage you divided the tonnage?

A. The tons handled is the basis on which you would have to divide the expense. Because the handling the tons is where the expense comes in. The tons handled would, of course, have to be the basis upon which to divide the expense.

Q. Then as I understand it, if you had the 90 per cent State

business and the 10 per cent interstate business, then you would say you would divide the expense on the same basis?

A. On the basis of the tons hauled.

Q. Then you arrive at the expense of doing the local business, which is the thing we are trying to find out here, the cost of
1841 doing the local business?

A. Yes, sir, that is right.

Q. You arrive at that only by dividing the aggregate expense of the State business in proportion to the State and interstate tonnage of the State business?

A. Yes, sir.

Q. And that is the only basis upon which you arrived at the cost of doing the local business?

A. That is the basis, tonnage, yes, sir. That is the basis.

Q. If that theory was the wrong theory, of course your conclusions would be wrong?

A. Naturally that would follow.

Q. You would not, as an independent proposition, undertake to give an opinion as an expert, what the actual cost of doing the State business was, in dollars and cents, other than the theory you have named?

A. No, sir.

Redirect examination.

By Gen'l HADLEY:

Q. Then as I understand you, this question of determining the relative cost of doing the State and interstate business, simply simmers itself down to determination of the proportion of the two classes of traffic on the two kinds of freight trains?

A. Yes, sir.

Q. And if the ratio of State and interstate freight, upon the inexpensive freight trains is the same as upon the expensive
1842 freight trains, there is no greater increased cost per ton mile upon the one class of freight than upon the other?

A. That is right.

Q. And in this case you think, from your investigation of the Burlington figures, and the conduct of its system, that ten per cent of the entire freight tonnage is State freight and that 10 per cent of the tonnage of the through freight trains is State freight?

A. That is my estimate.

Q. You give that as your opinion?

A. Yes, sir.

Q. As to this question of the relative tonnage of the through freight trains and the local freight trains, that is something that can be determined with mathematical exactness?

A. Yes, sir, it can be, absolutely so.

Q. If you were in charge of the auditing of the Burlington Railroad, and had occasion to file a suit to enjoin the enforcement of this law, and this was the question in the case, could you have presented, during the time you have given attention to this case, if you had

had all the way-bills, a definite statement of whether 10 per cent of all the tonnage of freight was State freight or not?

Judge SPENCER: And with the aid of General Hadley.

A. We could, for any stated period, by providing for it ahead of time. For instance now, if we wanted to know the exact tonnage handled in the way freight trains or the through freight trains on the Burlington road in Missouri, for the month of January, say, it could be arrived at definitely.

Q. So it would not be a matter of expert opinion at all?

1843 A. No, sir, it would not be a matter of expert opinion; it would be a matter of exact data.

Q. And calculation?

A. Yes, sir, and calculation.

Q. What do you say as to whether this question of the relative cost of State and interstate business is a question of expertness, or a matter of definite, mathematical calculation?

A. It is a question of definite, mathematical calculation.

The MASTER:

Q. Provided it is taken beforehand?

A. Yes, sir, as I say, if we wanted to know for the month of January, if we wanted to know the cost of the tonnage on the way and through freight trains, it could be ascertained definitely.

General HADLEY:

Q. In all your tabulations have you or haven't you, made any additional allowance for the extra cost of moving freight that is purely State or local freight?

A. Yes, sir. In the matter of the terminal expense. That is the only additional expense there can be as between State and interstate.

Q. In your tabulations you have allowed an additional expense?

A. I have taken that into calculation.

Q. As applied to purely State freight?

A. Yes, sir.

Q. What per cent do you allow in your tabulations?

A. I allowed about 12 per cent additional expense on State business, on account of the additional terminal expense.

Q. You say "about 12": What do I understand by that?

A. I figured that on the basis of estimates of the cost of

1844 handling a ton of freight at the terminal.

Q. I understand that. You must have allowed some per cent. What per cent was that? You say "about 12"?

A. 12 per cent.

Q. You allowed 12 per cent?

A. Yes, sir, taking that into consideration.

General HADLEY:

Q. You have not made any tabulations?

A. No, sir, no tabulations; simply my estimates.

Q. You have not submitted any reports showing the earnings with this additional cost of doing the State business?

A. No, sir.

Q. But you could furnish it, on the 12 per cent?

A. Yes, sir.

Q. On the basis of the Burlington figures?

A. Yes, sir.

Q. Dividing the expense of the doing of the freight business in proportion to the volume of State and interstate freight?

A. Yes, sir.

Q. And you think that would be a fair basis?

A. Yes, sir.

Q. Do you think it is fair, Mr. Fisher, to apportion all of the additional expense incident to the operation of way freight trains to the State business, and none of it to interstate business?

A. No, sir, it would not be fair at all. The interstate business should have to stand its proportion.

1845 Recross examination.

By Judge SPENCER:

Q. You have seen this tabulation of the Missouri Pacific Railroad, for a month?

A. No, sir, I have not seen that.

Q. In talking about what tabulations you had made, in answer to a question of the Master you said you allowed 12 per cent for terminal charges?

A. Additional.

General HADLEY: The witness and the Master misunderstood each other.

Judge SPENCER: That was in your mind, only.

A. Yes, sir, from taking a large number of way-bills and examining them there at the Burlington offices, and going through that, and figuring it up.

Q. What you took was the way-bills and the expense, from the bills-of-lading, and from that you would figure the cost of doing the business?

A. We would make an estimate of the total.

Q. After you got through with all that, having had access to the records right along, all you would have would be the cost and the tonnage?

A. Cost and tonnage.

Q. So if you have only the cost and the tonnage, you are no nearer on than you have stated here, that you would divide that on a tonnage basis?

A. That is the only basis upon which you could divide it.

Q. Didn't you answer that you could figure it out with

1846 mathematical certainty?

A. You can provide ahead for it, and do it.

Q. If you assume the percent to be 90 and 10, after having seen the cost, that is your result, isn't it?

A. You can get nearer by having your tonnage of through freight trains and your tonnage of way freight trains.

Q. After all, you get the volume of business handled on way freight trains in Missouri, and compare it with the volume of interstate business hauled?

A. The volume of the State business handled on all trains in Missouri, and the volume of interstate business handled on all trains.

Q. The way-bills, the bills-of-lading, and all the records of the Railroad, do not have any bearing on the actual cost of handling the business, except as stated therein?

A. That is all.

Q. They simply show it went from one station to another?

A. That is all.

Q. And does not show how much that shipment has been handled?

A. No, sir.

Q. So it does not show anything about the actual physical expense?

A. But it can be shown. If you want to ascertain it for the month of January, you could ascertain just how much was handled in way freight trains and how much was carloads; how much was interstate and how much was State freight.

Q. And how often it was handled?

1847 A. No, sir, I don't know that you could tell absolutely how often it was handled.

1848 T. M. BRADBURY, a witness of lawful age, being duly produced, sworn and examined on the part of Defendant, testified as follows:

Direct examination.

By Mr. S. B. LADD:

Q. State your name.

A. T. M. Bradbury.

Q. What official position do you hold, if any, in the State government?

A. I am secretary of the Missouri Board of Warehouse and Railroad Commissioners.

Q. How long have you been secretary?

A. Since April, 1902.

Q. You are familiar with the business and the records of that office, I suppose.

A. Yes sir, I suppose so.

Q. Do the railroads in the State make annual reports to that board?

A. Yes sir.

Q. They come into your possession as secretary, do they? and you have charge of them?

A. Yes sir.

Q. I will ask you if there is any railroad in the State of Missouri

owned or operated by any one other than a railroad company or corporation?

A. No sir, I think not. They all report to the Commission as companies. They all report to our Commission as a railroad or railway company.

1849 Mr. LADD: I will offer in evidence pages 5, 6, 7, 8, 15, 18, 19 and 36 of the printed annual report of the Board of Directors of the Chicago, Burlington & Quincy Railroad Company to the stockholders of that company for the year ending June 30, 1905, and the same pages of a like report for the year ending June 30, 1906.

The pages referred to are in the words and figures following, to-wit:

Note: At this point certain reports are now offered in evidence and the specific parts to be used will hereafter be designated by counsel.

The further hearing in this case will be adjourned, subject to call by the Master.

1850 KANSAS CITY, Mo., *March* 26, 1907.

In pursuance of notice to the parties litigant, through their respective counsel, the hearing in the case of the Chicago, Burlington & Quincy Railway Company vs. Herbert S. Hadley et al. was resumed at the Federal Building, Kansas City, Mo., on this day, March 26th, 1907, at two o'clock, P. M.

Present: Hon. F. L. Schofield, Special Master.

Mr. Frank Hagerman appeared on behalf of the Complainant. Attorney General H. S. Hadley, Assistant Attorney General John Kennish, and Mr. S. B. Ladd appeared on behalf of the Defendants.

The following proceedings were had.

Mr. LADD: I offer in evidence certain annual statements made by the Company to the Board of Railroad & Warehouse Commissioners.

First, the Annual Statement of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1904.

Mr. HAGERMAN: That is objected to as irrelevant, and having no bearing on the issues here.

The MASTER: I will formally over-rule the objection, although I cannot see what bearing it will have.

Mr. LADD: I next offer in evidence the Annual Statement of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1905.

1851 To which Counsel for Complainant makes the same objection.

Objection over-ruled.

Mr. LADD: I offer in evidence the Annual Statement of the

Chicago, Burlington & Quincy Railway Company, for the year ending June 30, 1906. This is endorsed "Operating Report."

To which Counsel for Complainant makes the same objection. Objection over-ruled.

Mr. LADD: I next offer in evidence the Annual Statement of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1906.

The MASTER: Did you not miscall that last one?

Gen. HADLEY: The one of the Railroad Company for the year ending June 30, 1906, is called "The Consolidated Report"; and the second one, for the year ending June 30, 1906, is called "The Financial Report".

The MASTER: As I understood the offer, the last but one was for the Railway Company for the year ending June 30, 1906; and then I also understood the last one to be for the year ending June 30, 1906.

Mr. LADD: Both the Railway and the Railroad companies made reports for 1906.

Gen. HADLEY: There are two of the Railroad Company for the year 1906, one called "The Consolidated Report", and one called "The Financial Report".

1852 Mr. HAGERMAN: To each of these reports we object also, because counsel cannot introduce a mass of documents of this kind, without pointing out what there is in them bearing upon the case, and what is material. They cannot drive the Complainant to investigation and imagination, as to the purpose for which they are offered.

The MASTER: It would be fair, to counsel on the other side to know what part of those documents offered will be used as evidence in the case.

Mr. LADD: Shall I designate that now?

I understood Judge Spencer agreed that each side could use such parts as they wanted to.

Gen. HADLEY: They were frequently referred to in the cross-examination of Mr. C. I. Sturgis.

Mr. HAGERMAN: Their experts said time and time again that our statements should be taken as true, as set forth in our exhibit. You cannot leave a document of that sort to the imagination of Court and counsel as to its purpose. If it is offered for any particular purpose, we might want to rebut it and we are entitled to that information.

The MASTER: I think that is fair.

Mr. LADD: I call attention to pages 1, 2, 3, 14, 15, 17, 18, 22, 23, 25, 26, 29, 30, 33, and 38½, in the report of the Company for the year ending June 30, 1904.

The report of the Railroad Company for the year ending June 30, 1904, is marked Defendant's Exhibit No. 29.

1853 Mr. LADD: I offer the same pages in the other reports, except that in those page 38½ of Exhibit 29 is page 39.

Mr. HAGERMAN: We object to the offer because it is a mere evasion of the Court's ruling, and there is no difference between that and the former offer of the whole book; and I ask the Master to require counsel to disclose what purpose there is in the offer of page 1.

The MASTER: I think the substance of what appears upon this page 1 is so evident that no explanation at all would be needed. If it is competent for any purpose, it would be competent for such purposes as might be germane to the subject treated of on page 1. I will over-rule the objection.

Mr. HAGERMAN: I make the further objection to page 1 that it seems to have been the report of the Railroad Company, and not of the Complainant in this case.

The objection is over-ruled.

Mr. HAGERMAN: I also object to the offer of page 2, of Exhibit 29.

The objection is over-ruled.

Mr. HAGERMAN: I also object to the offer of page 3, of Exhibit 29.

The objection is over-ruled.

Mr. HAGERMAN: I also object to the offer of page 14 of Exhibit 29.

The MASTER: Page 14 deals in a large number of items designated in figures and under various headings, and I think
1854 if there is any relevancy to the issues in this case of any of those figures, and it is not the purpose of counsel to contend that every one of those items is relevant, it is but fair to the Complainant that such items as may be used should be pointed out. I will sustain the objection that far.

Mr. HAGERMAN: That is for the entire system, isn't it, not for Missouri alone?

Gen. HADLEY: It says "Cannot give details as records were destroyed in the Chicago fire of 1871." That is the cost of construction.

The MASTER: You may designate what particular items you propose to use, contained on this page.

Mr. LADD: I will withdraw the offer of page 14.

Mr. HAGERMAN: I will designate on page 14, "Grand Total Cost of Construction, Equipment, etc., charged to Construction and Equipment, $18,662,343.63."

Mr. LADD: I object to his introducing evidence at this time.

Gen. HADLEY: Unless he designates for what purpose he offers it.

The MASTER: I will sustain that objection.

Mr. HAGERMAN: I make my offer, that I want to specify as going in evidence, the last three items on that page.

The MASTER: The offer will be denied at this time, giving counsel the opportunity to offer such items on that page as he may desire, when the proper time comes.

Mr. LADD: The next one is page 15.

1855 The MASTER: I shall require you to designate such of the items on page 15 as you wish to offer in evidence.

Mr. LADD: I designate them all.

Mr. HAGERMAN: I ask you to specify the purpose.

The MASTER: The objection is over-ruled, because each item is designated and explained upon the face of the paper.

Mr. HAGERMAN: I require counsel to designate the items on page 17. I cannot see the materiality of that. The expert for the State has admitted that the statement of earnings offered by the Complainant is correct.

Mr. LADD: Mr. Hagerman, you have said that so often you really believe it.

The MASTER: I am unable to see the materiality, but am unable to say that any or all of it is immaterial. Therefore, I shall over-rule the objection. But if upon the argument of this case any specific items upon that page, or any of these pages, are urged upon the attention of the Master, under such circumstances as fairness would seem to require an opportunity to refer to other records to answer them, I shall give counsel an opportunity to do so at the time. It seems to me hardly possible that all of these figures could be very material. There must be some portion of it that it thought to be more material, or specifically material, in this great mass, and it is but fair to the other side they should know what part of it will be used.

Mr. LADD: Your Honor will see that there are a great number of pages not offered at all.

1856 Gen. HADLEY: Page 18 we simply offer as negative testimony to show that no report was made for the State of Missouri.

Mr. HAGERMAN: Written on this page is the following: "We have no Missouri figures separate from the other states."

I ask the Master to require them to state the purpose.

The MASTER: That has been waived.

Gen. HADLEY: That simply shows that the accounts were kept as a whole, and not for the State of Missouri.

Mr. LADD: The next one is page 22. We offer all of that.

The MASTER: I shall sustain the objection, and require you to point out specifically the items on that page that you now deem material to the issues in this case.

Mr. LADD: We offer each and every item.

The MASTER: In respect of that offer, I shall over-rule Mr. Hagerman's objection, and make applicable the ruling made in respect of one of the other pages a moment ago.

Mr. LADD: Page 23 is next. Pages 22 and 23 go together.

The MASTER: The same ruling will apply to these.

Mr. HAGERMAN: To the offer of page 25 the same objection is made as before, and the same motion to require a statement of reasons.

The MASTER: I will require counsel to set out the various items

on this page which you deem material to the issues in this case.

1857 Mr. LADD: Pages 25 and 26 are really the same; one is an extension of the other.

Mr. HAGERMAN: The same objection will go to page 26.

The MASTER: Designate what portions of pages 25 and 26 you deem material.

Mr. LADD: We offer each and all of those items.

Mr. HAGERMAN: To which we make the same objection.

The MASTER: The ruling will be the same.

Gen. HADLEY: Page 29 is the next one. We offer that to show the absence of Missouri; but outside of that it is proper for the purpose of conducting this litigation.

Mr. LADD: We offer each of the items on page 30.

Same objection.

Same ruling.

Mr. LADD: Page 33 is the next one. That is simply the mileage in the different states: That might be useful to all of us. We offer each of those items.

The MASTER: The objection to the offer of that page is overruled.

Mr. LADD: The next is page 38½.

Gen. HADLEY: That is probably in evidence in a scattered form already.

The MASTER: The objection to the offer of that page is overruled.

Mr. HAGERMAN: What do you understand by this, General Hadley?

Gen. HADLEY: Lines not reported by other companies, but

1858 reported as constituting a part of the Burlington System.

Mr. HAGERMAN: As part of the mileage of the Railroad Company itself?

Gen. HADLEY: Yes.

Mr. HAGERMAN: What do you do with the other reports?

Mr. LADD: I understand the substance of the information is the same on every page in all the reports.

Mr. HAGERMAN: Let us get the exhibits numbered, and make the record right.

The Annual Report of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1904, is marked "Defendants' Exhibit No. 29."

The Annual Report of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1905, is marked "Defendants' Exhibit No. 30."

The Annual Report of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1906, known as the "Consolidated Report," is marked "Defendants' Exhibit No. 31."

The Annual Report of the Chicago, Burlington & Quincy Railroad Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1906, known as the "Financial Report," is marked "Defendants' Exhibit No. 32."

1859 The Annual Report of the Chicago, Burlington & Quincy Railway Company to the Board of Railroad & Warehouse Commissioners, for the year ending June 30, 1906, is marked "Defendants' Exhibit No. 33."

NOTE.—It is understood that the same objections are made to the same offers of the several pages in the above exhibits, corresponding with those referred to in connection with Exhibit 29, and the same rulings and same explanations made in respect of each.

1860 T. M. BRADBURY, recalled, on behalf of the Defendants, testified as follows, to-wit:

Direct examination.

By Mr. HADLEY:

Q. You are the Secretary of the State Board of Railroad & Warehouse Commissioners?

A. Yes sir.

Q. I hand you Exhibit 33, which is called the Operating Report of the Chicago, Burlington & Quincy Railway Co., and ask you if that is the first report that the Chicago, Burlington & Quincy Railway Company has ever made to the Board of Railroad & Warehouse Commissioners of this State?

A. Yes sir.

Q. Was that report made in response to a request of the Board for it?

A. Yes sir.

1861 A. P. TALIAFERRO, recalled, on behalf of the Defendants, testified as follows, to-wit:

Direct examination.

By Mr. LADD:

Q. Mr. Taliaferro, I show you now the original return to the State Auditor of its property by the Chicago, Burlington & Quincy Railroad Company, filed in the office of the State Auditor on the 30th of December, 1905.

The MASTER: Is that the return for taxation?

Mr. HAGERMAN: That is for the Railroad Company, and to that we object as incompetent, and in no wise affecting or binding upon the Complainant in this case; and besides that, it is immaterial and incompetent, because the actual assessment made has already been shown in evidence.

The objection is over-ruled.

Gen. HADLEY: I think probably, Mr. Hagerman, you would be willing to agree that the Railway Company made no return. I know

it to be a fact that the Railway Company has never made a return to the State Board of Equalization.

Mr. HAGERMAN: Let it be so recorded. The return is made, and the assessment made against the Railroad Company, and not against the Railway Company.

The MASTER: I think the record already shows that.

Gen. HADLEY: My recollection is that the agreement was in reference to the return made to the Board of Railroad & Warehouse Commissioners, and not to the Auditor.

Mr. HAGERMAN: There is some place in the record
1862 where the assesment was shown to be made.

Mr. LADD: My recollection is Mr. Fisher showed that.

Q. Mr. Taliaferro, have you made from this return a compilation?

A. Yes sir.

Q. As to the value of this property, returned as shown by this official return made by the Railroad Company, and if you have state what it foots up?

A. The total value shown by this return is $5,638,407.

Mr. HAGERMAN:

Q. Does that include everything?

A. That includes the road-bed, rolling stock, and other movable property, and the fixed property on the right-of-way.

Q. Is there anything else included in the values?

A. Not in the return.

Q. Have you that tabulated by the mile, too?

A. Yes sir.

NOTE.—It is agreed that the Iowa & St. Louis Railroad Company made a return to the Auditor for the same period:

Valuing its road-bed at	$93,180
Its rolling-stock at	47,317
Its buildings at	3,625
Making a total of	$144,122

That according to the return the mileage of its main line was 46.59; and of its side-tracks 5.44.

1863 That the Atchison & Nebraska Road made a return of its property at the same time:

Valuing its road-bed at	$77,250
Its rolling-stock at	9,700
No valuation placed on buildings	
Making a total of	$86,950

With a main track mileage of 3.9 miles, and side-tracks 1.75 miles.

That the St. Joseph & Nebraska Railroad Company made its return in the same manner, placing no valuation on its road-bed,

Valuing its rolling-stock at	$20,000
Its buildings at	235
Making a total of	$20,235

With a main line of 5.86 miles, and sidings 3.22 miles.

That these three properties are considered as part of the Complainant's property in Missouri.

Mr. HAGERMAN: I don't know whether that is so or not. You may state that those three properties were not returned in the return you offered, but in the assessment they were included as a part of the system. That admission is made, subject to the objection as to its being competent or relevant in this matter. There must have been some purpose on the part of the Company in making the returns separately.

Mr. LADD:

Q. Have you figured out, Mr. Taliaferro, the valuation per mile of the property of the Chicago, Burlington & Quincy Railroad Company, as shown by this return you have referred to?

1864 A. Yes sir.

Q. How much of it?

A. $5,163.29.

Q. What does that include?

A. That includes road-bed, rolling stock and other movable property, and fixed property on the right-of-way.

Q. It includes all the property that was returned?

A. Yes sir. It also included $58,059, the value of the Pullman cars assessed against the road in Missouri.

Mr. LADD:

Q. In connection with Mr. Taliaferro's testimony on this point, we will offer in evidence a statement certified by the State Auditor as to the assessment of the property of the Company, made by the Assessors in the different counties through which it runs, amounting to $530,440, that assessment being made in pursuance of Section 9360 of the Revised Statutes.

The paper referred to is marked "Defendants' Exhibit No. 34."

Defendants' Exhibit No. 34 is in words and figures following, to-wit:

1865 Gen. HADLEY:

Q. These compilations you have made as to the value of the property of the Burlington Railroad Company, as returned by its chief officers, and the taxation officer, Mr. Mills, is a return made in accordance with Sections 9339 and 9340 of the Revised Statutes of Missouri, aren't they?

A. The form so reads.

Q. And that return is sworn to by Mr. Mills, isn't it, the affidavit being that it is the cash value of the property?

A. (After examining paper:) The return is sworn to by Mr. Mills, and is said to contain "A full, true and complete list of all the property owned, used, or leased by said Company, on the 1st day of June, 1905."

Mr. HAGERMAN:

Q. By what Company is that? Read the whole affidavit.

Mr. LADD: There is an affidavit for each one.

Mr. HAGERMAN: I know that. I do not want the witness to torture the affidavit he is reading. If he wants to read the affidavit for each company, all right; but he is reading an affidavit as if it were for all, whereas it applies to each particular line.

Mr. HADLEY:

Q. State if Mr. Mills made an affidavit for each particular line in that return?

A. (After examining return:) Each page in the return is sworn to by Mr. George M. Mills.

Q. That is, for each of these lines to which you have referred?

A. Yes sir.

1866 Cross-examination.

By Mr. FRANK HAGERMAN:

Q. I thought we had it in Mr. Fisher's testimony, but I do not find it in the memorandum I have here:

What was the actual amount of the assessment against the Burlington Company by the State Board for 1906?

The MASTER:

Q. Is that the assessment made upon these returns now considered?

Mr. HAGERMAN: Yes sir.

A. Excluding the three lines for which separate returns were made, the assessed value——

Q. They were included in the assessment, weren't they?

A. I was going to give it to you both ways. I will give it all, if you wish.

Q. Give it all. I do not care for the details.

A. The total assessment against the Chicago, Burlington & Quincy Railroad Company as shown by the journal of the Board of Equalization for 1906, was $14,247,813.23.

Q. Using our multiple of three, what will that make it for the state?

A. $42,743,439.69.

Q. Let us add the local assessment of $530,440 to the $14,000,000, and get the whole thing.

A. That gives a figure of $44,334,759.69.

Q. What was the original figure before you multiplied by three, $14,247,813.23, wasn't it?

A. Yes sir.

Q. Per mile what is that?
1867 A. $12,422 per mile.
Q. What is the mileage?
A. 1147 miles.

The MASTER: Suppose a dispute arises between two farmers, or two business men, in respect of the value of a piece of property, will the assessed value of that property as returned for taxation, in any way fix the reasonable or cash value of the property?

Mr. HAGERMAN: If the State assesses on a certain valuation, say $38,000 a mile, they never can say, on the question of rates, that it is worth less, no matter how much more it may be worth.

The MASTER: Why would this case differ in that respect from any law-suit, between any two parties—the question being what is the reasonable value of that property? How far would either of them be controlled by the return on that property for assessment or taxation purposes?

Gen. HADLEY: It is a question of how it would be admissible evidence.

The MASTER: I have admitted the evidence.

Gen. HADLEY: The question of how far the Court or the jury would be bound by a sworn statement that it was the actual cash value of the property at the time the return was made——

Mr. HAGERMAN: And still stronger when the Attorney General has, under his oath, fixed it at a certain value. He cannot say it is worth less.

Gen. HADLEY: The Attorney General fixes it upon the sworn statement of an officer of the road, made at one time for a
1868 certain purpose.

Mr. HAGERMAN: I have compiled here to have in form as an exhibit that will be more easy of reference, this assessment of 1906, and I wish you would look over it and see if it is correct, because if it is I want to attach it to an exhibit. It is the way I took your figures down.

It first gives the total valuation assessed by the State Board, and then adds the local assessment.

A. (After examining paper:) That appears to be all right.

Mr. HAGERMAN: I offer in evidence this paper as "Complainant's Exhibit No. 35."

Complainant's Exhibit No. 35 is in words and figures following, to-wit:

1869 Re-direct examination.

By Mr. LADD:

Q. You say the gross assessment is $14,247,813.23?
A. That is the figure shown on the journal of the State Board.
Q. Does that include the assessment of the property of those three roads which made returns of their own?
A. Yes sir.

Q. What kind of property does that assessment cover? Is it divided up into different kinds of property?

A. It is divided into two heads, in making the detailed figures for the county; and in summarizing it is divided into four heads.

Q. What are they?

A. The two heads are: "Road-bed, Superstructure, Rolling Stock and all other Property"; that is one column. The other column is headed, "Buildings". But in making up what is called the itemized statement of the details of each property, the value of the rolling stock, of the road-bed, and superstructure, and the buildings on the right-of-way, and "all other property" is given separately.

Q. How much is the assessed valuation under the head of "all other property"?

A. Including those three roads?

Q. Yes.

A. $2,680,996.38.

Q. Does it show how much it is for Pullman cars?

A. Yes sir.

Q. How much?

A. $58,059.

By Mr. HAGERMAN:

Q. How much a mile would that be?

A. On the Pullman cars?

Q. Yes. That is so insignificant it doesn't amount to much, does it?

Mr. LADD:

Q. The Pullman cars are not included in "all other property", are they?

A. No sir.

Mr. HAGERMAN:

Q. How much a mile would that be for Pullman cars?

A. It would be about $55 a mile.

Q. So it would make no substantial difference in the valuation per mile?

A. No sir.

Mr. LADD:

Q. What do you understand "all other property" is?

Mr. HAGERMAN: That is objected to. He cannot have any knowledge upon the subject.

The MASTER: If he knows, he may state.

Mr. LADD:

Q. What information have you upon that subject, if any?

A. I have been informed by a member of the Board of Equalization——

Mr. HAGERMAN: That is objected to.

The MASTER: That will not do. The objection is sustained.

Mr. LADD: I offer in evidence a paper to be marked "Defendant's Exhibit No. 36", being a statement of Missouri's proportion of
1871 the freight earnings of the Chicago, Burlington & Quincy Railway Company, also tons one mile, etc., for the month of September, 1906.

Defendant's Exhibit No. 36 is in words and figures following, to-wit:

1872 Q. Mr. Taliaferro, did you have anything to do with the preparation of this Exhibit 36, which you have before you now?

A. Yes sir.

Q. What?

A. I took the figures as they were brought to St. Louis by Mr. Hamilton——

Q. Is Mr. Hamilton one of your employés?

A. He is an employé of Haskins & Sells. I assisted in putting them together in their present form, working out the averages, etc.

Q. Look at the eighth column, under the head of "Average amount received per ton per mile": Take the first figure in that column—what does that mean? 5 mills and a fraction?

A. Yes sir.

Q. What information was brought to you by Mr. Hamilton from which this was worked out? I want to see how much of this you did, and how much was brought to you by Mr. Hamilton; how much information you had from him in order to make up this statement.

A. Mr. Hamilton brought the information as to the number of tons.

Q. And of the different kinds, shown in Column 1?

A. Yes sir.

Q. Well?

A. The revenue as shown in Column 3; the ton miles as shown in Column 6; that is all.

1873 Q. Where did you get your information to work out column 9, "Average length of haul"?

A. We divided the number of ton miles by the number of tons.

Q. That is, you divided the figures in Column 6, to illustrate, by the figures in Column 1: is that right?

A. Yes sir.

Q. That gave you the average length of haul for all the tons mentioned in Column 1: is that right?

A. Yes sir.

Q. Mr. Talliaferro, have you prepared some exhibits based on this, showing what the results would be in the case of the Burlington?

A. Yes sir.

Q. Looking again at Exhibit 36, you say you had the information from Mr. Hamilton, which is contained in Columns 1, 3 and 6: is that right?

A. Yes sir.

Q. Having that information, is it merely a matter of mathematical calculation to work out the figures in all the other columns?

A. Yes sir.

Mr. LADD: I wish you would look at an exhibit which I will offer in evidence as Exhibit No. 37, consisting of two sheets, and headed "Statement of Gross Earnings and Operating Expenses of the Freight Business of the Chicago, Burlington & Quincy Railway Company in Missouri, for the Calendar Year 1905, on the following Bases."

1874 Defendants' Exhibit No. 37 is in words and figures following, to-wit:

1875 Q. Did you supervise and assist in the preparation of this Exhibit No. 37?

A. Yes sir.

Q. You first assume a certain amount as interstate earnings, $6,735,454.71: where do those figures come from?

A. From Exhibit 1 put in by the Burlington Railway.

Q. You next assume that 84.51 per cent, or $5,691,857.50, was derived from carload business: where did you get that 84.51 per cent?

A. That is based on the showing made by the Company's way bills for September, 1906.

Q. As shown in Exhibit No. 36?

A. Yes sir.

Mr. HAGERMAN:

Q. In what column of Exhibit No. 36?

A. It is not shown on Exhibit 36, but is worked out from it.

Mr. LADD:

Q. It is not shown on Exhibit 36?

A. No sir.

Q. But is the result of what is shown on Exhibit No. 36?

A. Yes sir.

Q. And 15.49 per cent from the less than carload business; is that percentage derived from Exhibit No 36?

A. Yes sir.

Q. That is, by taking the interstate carload business shown in Exhibit 36, and the less than carload freight business shown in Column 3, the "revenue" column of Exhibit 36, you get those percentages?

1876 Mr. HAGERMAN:

Q. Is that the percentage of just the interstate carload, or the percentage of the total carload business?

A. Those are percentages of interstate carload and less than carload business.

Mr. LADD:

Q. In that first paragraph of Exhibit 37, you assume that the revenue for the entire year from the interstate freight business, carload and less than carload, will bear the same proportion to each other that they did for the month of September, 1906: is that right?

A. Yes sir.

The MASTER:

Q. And you are applying that proportion to the business for the year 1905?
A. Yes sir.

Mr. LADD:

Q. Your next assumption is regarding the state freight earnings, said to be $1,649,665.73: where did you get those figures?
A. From Complainant's Exhibit No. 1.
Q. "69.33 per cent was from carload business, and 30.67 per cent from less than carload business": Did you arrive at those percentages from Exhibit 36, in the same way as you did the percentages in respect of the interstate freight earnings?
A. Yes sir.
Q. You assume in the second paragraph of Exhibit 37 that the proportion of revenue between state carload and state less than carload business, as shown by the operations of the company for September, 1906, prevailed during the whole of the year 1905: is that right?
A. Yes sir.

1877 Mr. LADD:

Q. In the third column you assume that the earnings from interstate business in Missouri amounted to 74 cents per ton per mile: where did you find that?
A. In Exhibit 36, in Column 8, line 10.
Q. In the fourth column you assume that the earnings from interstate less than carload business amounted to 2.2816 cents per ton per mile: where did you get that?
A. In column 8, line 11, of Exhibit 36.

Mr. HAGERMAN:

Q. You use the decimal in different places in one exhibit than you do in the other, don't you?
Mr. LADD: One is cents, and the other is mills.

Mr. HAGERMAN:

Q. Those mean the same thing, do they?
A. Yes sir.
Mr. LADD: What do you mean by that?
Mr. HAGERMAN: In Column 8 of Exhibit 36, he has .0074, and in Exhibit 37 he has .74; isn't that right?
A. Yes sir.
Q. You mean to express the same idea; that is, 7.4 mills?
A. Yes sir.

Mr. LADD:

Q. In the fifth paragraph of Exhibit 37, you assume that the earnings from state carload business in Missouri amounted to 1.3297 cents per ton per mile: where do you get that?
A. That is taken from Exhibit 36, column 8, line 14.

Q. In the sixth paragraph of Exhibit 37 you assume that the earnings from state less than carload business in Missouri amounted to a little over 4⅔ cents per ton per mile: where did you get that?

1878 A. From column 8, line 15, of Exhibit 36.

Q. In the seventh paragraph of Exhibit 37, you assume that the total operating expenses of the State carload business were twice as much per ton per mile as the total operating expenses per ton per mile, of all the interstate carload business: that is an hypothesis for the purposes of the preparation of this statement, is it?

A. Yes sir.

Q. To show where it would lead you?

A. Yes sir.

Q. I think you have perhaps already testified to it, but I will ask you whether you are of the opinion that the total operating expenses of the state carload business were twice as much per ton per mile as the total operating expenses per ton per mile of the interstate carload business?

A. No sir, I do not think they were anything like as much as that.

Q. In your eighth paragraph, you assume that the total operating expenses of all the less than carload business were 3, 5, or 7 times as much as the total operating expenses per ton per mile, of all the interstate carload business: that eighth paragraph contains those three hypotheses or assumptions, for the purpose of making a showing as to the result on their bases: is that it?

A. Yes sir.

Q. Upon the basis shown in the first column, of the state carload business costing twice, and all the less than carload busi-

1879 ness costing three times as much per ton per mile as all interstate carload business, what were the net earnings on the state freight business for the year 1905?

A. $788,382.07.

Q. Assuming that the state carload business cost twice, and all less than carload business five times as much per ton per mile as all interstate carload business, what would the net earnings on the state freight business be for the year 1905?

A. $784,639.39.

Q. With the same assumption, only changing the five times to seven times, what would have been the net earnings?

A. $782,300.22.

Q. I see in the last column, under the head of "Net earnings", on interstate business, less than carload, the figures $76,399.04, in red ink: what does that indicate?

A. That indicates a loss on the interstate less than carload business.

Q. I will hand you a paper, which I will presently offer in evidence as Defendant's Exhibit No. 38: You had the same connection with the preparation of Exhibit 38 as you did with Exhibit 37, did you?

A. Yes sir.

Mr. LADD: I will now offer that paper in evidence as "Defendant's Exhibit No. 38".

Defendant's Exhibit No. 38 is in words and figures following, to-wit:

1880 Q. Your assumptions contained in the first six paragraphs of Exhibit 38 are the same as were contained in Exhibit 37, aren't they?

A. Yes sir.

Q. You assume in the seventh paragraph of Exhibit 38 that of the total operating expenses in connection with state carload freight, that portion known as "Conducting Transportation" was twice as great per ton per mile as on all interstate carload business per ton per mile: Now, I will ask you (I will lead you a little, to save time) do you mean by "Conducting Transportation" that part of the expense which was gone into in great detail by Mr. Sturgis, early in his examination, up in Chicago?

A. Yes sir, and also shown in Exhibit 6, filed by the Burlington Road.

Mr. HAGERMAN:

Q. That is to say, it was not all operating expenses, but "Conducting Transportation" is only a portion of the operating expenses?

A. Yes sir.

Mr. LADD:

Q. Your eighth paragraph of Exhibit 38 assumed that of the total operating expenses in connection with all the less than carload business, that portion known as "Conducting Transportation" was 3, 5 or 7 times as great per ton per mile as on all interstate carload business per ton per mile?

A. Yes sir.

Q. Upon *what* basis or hypotheses that "Conducting Transportation" costs twice as much per ton per mile in each case

1881 on . . carload freight as on interstate carload freight; and that the same part of the expense was three times as great on all the less than carload business as on the interstate car-load business, as shown in Column 2 under that heading, what were the net earnings in the year 1905, upon the state freight business?

A. $926,393.30.

Q. Suppose for the less than carload business you used the multiple of cost at five times instead of twice, what would have been the net earnings on the state business?

A. $915,633.10.

Q. Suppose you used, as you do in the third column, seven times as much per ton per mile, for cost, what would the result be?

A. $906,744.24.

Q. On state business?

A. Yes sir.

Q. Please examine the paper I hand you, which will be marked Defendants' Exhibit No. 39: you supervised and assisted in the preparation of this statement, did you?

A. Yes sir.

Mr. LADD: I will now offer that statement in evidence, as "Defendants' Exhibit No. 39".

Defendants' Exhibit No. 39 is in words and figures following, to-wit:

1882 Q. Your first assumption on Exhibit 39 is that of the interstate freight earnings of $6,735,454.71, as shown by Exhibit 1, 27.23 per cent was derived from through interstate business; and 72.77 per cent was derived from second class interstate business: will you please state where you got those percentages?

A. Those figures are based on the revenue figures shown in column 3 of Exhibit 36.

Q. Exhibit 36 shows the revenue from through interstate and second-class interstate, separately?

A. Yes sir.

Q. In your second paragraph you assume that 88.37 per cent was derived from through interstate carload business, and 11.63 per cent from through interstate less than carload business: where did you get those percentages?

A. They are based on the figures shown in column 3 of Exhibit 36.

Q. In the third paragraph your assumption is that 83.06 per cent of the second-class interstate freight earnings was derived from carload business, and 16.94 per cent from less than carload business: where did you get those percentages?

A. They are based on column 3 of Exhibit 36.

Q. In your fourth paragraph you take the state freight earnings from Complainant's Exhibit No. 1: Now where do you get the percentages shown there, 69.33 per cent from carload business, and 30.67 per cent from less than carload business?

1883 A. They are based on the figures shown in column 3 of Exhibit 36.

Q. In your fifth paragraph, on what do you base the assumption of the earnings from through interstate carload business in Missouri, being 5 and a fraction mills per ton per mile?

A. That is based on column 8 of Exhibit 3, being the first figure in that column.

Q. And is the same true of the sixth paragraph, as to the earnings per ton per mile from through interstate less than carload business?

A. Yes sir.

Q. And is it also true of the assumption in the seventh paragraph as to the earnings per ton per mile from the second class interstate carload business?

A. Yes sir.

Q. And also as shown in the eighth paragraph, earnings from second class interstate less than carload business?

A. Yes sir.

Q. Where do you get your authority for assuming, as you do in paragraph 9 of Exhibit 39, that the earnings from state carload business in Missouri amounted to 1.3297 cents per ton per mile?

A. That was the showing made by the Burlington way-bills for the month of September, 1906, Exhibit 36.

Q. And is the assumption in the tenth paragraph, as to the earnings per ton per mile from the state less than carload business derived from the same source?

1884 A. Yes sir.

Q. You assume in this exhibit, as you do in all these exhibits, that the same proportion obtained during the year 1905, as to a division between through interstate and second-class interstate, between interstate and state, and as to the respective earnings per ton per mile of each class of freight, do you?

A. Yes sir.

Q. Your eleventh hypothesis is that the total operating expenses of the second class interstate carload business were one and one-half times, and of the state carload business two times as much per ton per mile as the total operating expenses per ton per mile of the through interstate carload business: that is merely an assumption, is it, to see what result it will lead?

A. Yes sir.

Q. I do not think you have stated it in this case, but what is the difference between "through" interstate, and "second-class" interstate business, as those terms are found in these exhibits?

A. "Through" interstate business, as we understand it, and have been using the term, means business which neither originates nor terminates in the state of Missouri, but passes through some part of the State in transit.

Q. And "second-class" interstate business is what?

A. It has been used to designate business which either originates or terminates in the State of Missouri, or passes out of the State going from one point in the State to another.

1885 Q. Your twelfth assumption in Exhibit 39 is that the total operating expenses of all the less than carload business were respectively three, five, or seven times as much per ton per mile as the total operating expenses per ton per mile of the through interstate carload business: And those different assumptions are shown in three different columns, are they, following these 11th and 12th paragraphs: is that right?

A. Yes sir.

Q. Upon the first assumption, that the total operating expenses of all the less than carload business were three times as much per ton per mile as the expenses per ton per mile of the through interstate carload business, what would have been the result on the state freight business of the Company for the year 1905?

A. The statement shows that the net earnings would have been $939,960.51.

Q. Suppose those expenses instead of being three times as much had been five times as much, what would the result have been?

A. The figure would be $925,457.63.

Q. Net earnings?

A. Yes sir, net earnings.

Q. Suppose those expenses had been seven times as much, what would the result be?

A. The net earnings would have been $913,293.93.

Mr. LADD: I will now offer in evidence a statement as "Defendant's Exhibit No. 40."

Defendant's Exhibit No. 40 is in words and figures following, to-wit:

1886 Q. Mr. Taliaferro, your first ten assumptions on Exhibit 40 are the same that they were in Exhibit 39, aren't they?

A. Yes sir.

Q. Your eleventh assumption on Exhibit 40 is that of the total operating expenses, in connection with second-class interstate carload freight, that portion known as "Conducting transportation" was one and one-half times as much per ton per mile as on through interstate carload business per ton per mile; and in connection with the state carload freight, that portion known as "Conducting transportation" was twice as great per ton per mile as on through carload business; and in the thirteenth paragraph, that of the total operating expenses in connection with all less than carload business, that portion known as "Conducting transportation" was respectively three, five or seven times as much per ton per mile as on through interstate carload business per ton per mile:

Now, upon the first assumption, which is stated concisely in the heading to the second column, that the expense of the less than carload business was three times as great, what would have been the net earnings on the state business in Missouri in 1905?

A. $1,010,135.71.

Q. Suppose it were five times as much, instead of three, what would the result be?

A. $997,504.18.

Q. Suppose it were seven times as much, what would the result be?

A. $984,872.63.

1887 Mr. HAGERMAN:

Q. What is the difference in the assumptions in your paragraphs 11 and 12 in Exhibit 40, and in Exhibit 39?

A. No difference.

Q. No difference between the 11th and 12th?

A. The 11th and 12th paragraphs in Exhibit 40 might have been combined and compared with paragraph 11 in Exhibit 39.

Q. You would say as to Exhibit 40 that the first twelve assumptions are the same in the two exhibits?

A. No sir, because this (indicating Exhibit 40) relates to "Conducting transportation" being increased.

Q. And the other (indicating Exhibit 39) relates to the total operating expenses?

A. Yes sir.

Mr. LADD:

Q. Do you know, Mr. Taliaferro, from the figures which have been introduced by the railroad company, what is the percentage of operating expenses to the total freight earnings in the State?

A. Not taking into account the miscellaneous freight earnings, but applying all of the freight expenses to the freight revenues shown

by Exhibit 1, the ratio of operating expenses to earnings on freight business was 55.79 per cent.

Mr. HAGERMAN:

Q. That is the ratio you have added at the foot of Exhibit 40?
A. It is the last item on all of them.

Mr. LADD: That has nothing to do with Exhibit 40.
Mr. HAGERMAN: That is what he is reading from.

Mr. LADD:

Q. What do you say the percentage of freight expenses
1888 is to freight earnings of all kinds in Missouri for the year 1905, from the Company's own figures?
A. 55.79 per cent, excluding the miscellaneous freight earnings.
Q. What figures of the Company did you use?
A. I used the freight earnings shown in Exhibit 1.
Q. Amounting to how much?
A. Amounting in 1905 to $8,385,120.44.
Q. What figures did you use for the freight operating expenses?
A. The figures shown in the Company's Exhibit No. 6, amounting to $4,678,346.90.
Q. You took the total freight earnings as shown by the Company's statement, for 1905; the total freight operating expenses for Missouri, as shown by the Company's statement; and one is 55.79 per cent of the other, is it?
A. Yes sir.
Q. You do not include in that the rentals?
A. No sir.
Q. Do you include taxes?
A. No sir.
Q. Is there anything else which has been talked of here at all as expenses, that you include?
A. We took what are known as "Operating Expenses" in Exhibit 6.
Q. That does not include rent, nor interest on bonds, nor taxes: is that right?
A. That is right.
1889 Q. You say that is 55.79 per cent?
A. Yes sir.
Q. In the figures which you took as the gross freight earnings, are there included what are called "Miscellaneous freight earnings from switching, demurrage, etc."?
A. No sir.
Q. Are those excluded?
A. Yes sir.

The MASTER: Those items do not appear on Exhibit 6. He included only what is shown on Exhibit 6.
Mr. LADD: Exhibit 6 is expenses.
Mr. HAGERMAN: Exhibit 1 includes freight earnings, but he eliminates those.

The WITNESS: We left it out because it did not include switching freight earnings.

Mr. LADD: As I understand it, he takes the freight earnings as shown by Complainant's Exhibit 1; he takes the operating expenses as shown by Complainant's Exhibit 6.

Mr. HAGERMAN: He does not take all the freight earnings shown in Exhibit 1.

Mr. LADD: I wish there were more, for the purposes of the question I am going to ask him now.

Mr. HAGERMAN: For what year did you take that?

A. 1905.

Q. Of the total earnings for freight, what did you take? What figure did you take?

A. $8,385,120.44.

Q. That is the amount shown in Exhibit 1, without any-

1890 thing deducted?

A. The miscellaneous freight earnings are included in here, down at the bottom.

Q. For "Mail, express, etc."?

A. Yes sir, "etc."

Mr. LADD: He does not include any of the miscellaneous freight earnings at all.

Q. Now, Mr. Talliaferro, assuming that it costs 55.79 cents to earn a dollar in the freight business of this State, all business; and assuming further that it costs twice as much per ton per mile for the state business at it does for the interstate business; what would be the result as to earnings?

A. The revenue per ton per mile on all freight business in the month of September, 1906, as shown by Exhibit 36, was 9.025 mills; 56 per cent of that figure gives the operating expenses per ton per mile of 5.054 mills.

Q. You are taking 56 per cent, and discarding the fraction?

A. Yes sir.

Q. That is, you use 56 instead of 55.79?

A. Yes sir. Using the figures shown in column 7 of Exhibit 36, the interstate ton miles being 91.33; and the state ton miles being 8.67 per cent; and doubling the cost per ton per mile of the state business; would give the expense per ton per mile for interstate business as 4.658 mills.

Q. And how much for state?

1891 A. Twice that, or 9.316 mills. Applying those costs to the ton mile earnings shown by Column 8 of Exhibit 36, being 8.265 mills on all interstate business, and 17,032 mills on state business, would give a profit per ton per mile on interstate business, of 3.607 mills, and on state business of 7.716 mills. Making the ratio of cost 56.36 per cent in the case of interstate, and 54.70 per cent in the case of the state business.

Q. How much profit on the state business per ton per mile?

A. 7.716 mills.

Q. Have you the number of ton miles of state business in 1905?

A. We have it by dividing the earnings by the revenue per ton per mile shown for September, 1906.

Q. What does that show?

A. On that basis the ton miles of state business in 1905 would be 96,862,311.

Q. Multiply that by the profit per ton per mile on the state business, and what does it amount to?

A. $747,389.39.

Q. That is net profit?

A. Yes sir.

Q. That assumes that it costs twice as much for all the operating expenses per ton per mile to do the state as to do the interstate business?

A. Yes sir.

1892 Q. Have you another way of reaching substantially the same result?

A. We have taken the actual earnings and expenses, as shown in Exhibit 1, for 1905, and found the ton miles of the state and of the interstate business respectively, by using the average revenue per ton per mile, shown in Exhibit 36, and we have doubled——

Q. Now, wait a moment: You take the average revenue per ton per mile for the interstate business, and divide it into the interstate earnings, as shown by Complainant's Exhibit 1, do you?

A. Yes sir.

Q. And in that way you find the number of ton miles?

A. Yes sir.

Q. You assume the average revenue per ton per mile during the year 1905, was the same as it was in September, 1906, as shown by Defendant's Exhibit No. 36?

A. Yes sir.

Q. That is right, is it?

A. Yes sir.

Q. And in that way you get the number of ton miles of interstate freight?

A. Yes sir.

Q. What do you do about state freight?

A. We divide the state freight earnings——

Q. As shown by Complainant's Exhibit 1?

A. Yes sir.

Q. By what?

1893 A. By the revenue per ton per mile on all state freight, as shown by Exhibit 36.

Q. What was that?

A. The figure is 17.032 mills.

Q. There you assume that the revenue per ton per mile on all state freight, for the year 1905, was as shown for September, 1906, by Exhibit 36, do you?

A. Yes sir.

Mr. HAGERMAN:

Q. You divide the 1649 by the 17.032?

A. Yes sir.

I would like to say that we used the ton miles worked out on carloads and less than carloads separately. I did that hurriedly today, and there might be some little variation, but not much, in that.

Mr. LADD:

Q. You divided the total revenue, as shown by Complaiant's Exhibit 1, by the revenue per ton per mile, as shown by Defendant's Exhibit No. 36, did you?

A. Yes sir.

Q. And in that way you got the number of ton miles during 1905?

A. Yes sir.

Q. You have the ton miles of state freight, and the ton miles of interstate freight?

A. Yes sir.

Q. What did you do with it?

A. We doubled the ton miles of state freight.

Q. In the first place, what are the ton miles of interstate freight?

1894 A. 814,914,988 ton miles.

Q. What are the ton miles of state freight?

A. 96,862,311 ton miles.

Q. You multiply that last figure by two, do you?

A. Yes sir.

Q. And what does that give you?

A. 193,724,622.

Q. And then you add that to the ton miles of interstate freight, do you?

A. Yes sir.

Q. Then what do you have?

A. 1,008,639,610.

Q. What did you do then?

A. Then we took the ton miles of interstate freight, and the ton miles as increased of state freight, and using those figures as factors, we made percentages of the whole, and use those percentages in dividing the operating expenses between interstate and state freight.

Q. What percentages do you reach?

The MASTER: That is precisely the formula of Mr. Sturgis.

Mr. LADD: It is the same thing.

Q. What percentages did you reach?

A. For interstate 80.79 per cent; for state, 19.21 per cent.

Q. Proceed.

A. Applying those percentages to the total freight operating expenses, gives for the state freight $898,710.44.

Q. What is that figures at?

1895 A. That is the operating expenses for the state freight assigned here to the state freight.

Q. What was the revenue from state freight, according to Complainant's Exhibit 1?

A. Exclusive of miscellaneous earnings, $1,649,665.73.

Q. Then what are the net earnings, deducting one sum from the other?

A. $750,955.29.

Q. Now, how do the interstate earnings figure out?

A. The interstate earnings were $6,735,454.71. The operating expenses are arrived at on the basis I have described, and were $3,779,636.46. And the net earnings in that case would have been $2,955,818.25.

The ratio of expenses to earnings in the case of state freight would have been 54.84, and in the case of interstate 56.08.

The MASTER: Right while you are there, take those two figures of theoretical earnings, and add them together, and let us compare them with the earnings as returned by Complainant's Exhibit 1, and see how they compare?

A. These are the earnings as shown by Exhibit 1.

Q. I thought they were based upon the theory of the business of September, 1906?

A. Only for the purpose of finding the ton miles.

We divided the actual earnings as reported by the Company in Complainant's Exhibit 1, by the revenue per ton mile, just to get the ton miles for a starting point.

1896 Mr. LADD:

Q. That is upon the basis of the cost per ton mile of state freight being twice as much as that of interstate freight?

A. Yes sir.

Q. All the way through?

A. Yes sir.

Questions by Mr. JOHN KENNISH:

Q. Mr. Taliaferro, Mr. Hagerman asked you as to the assessed valuation of the Chicago, Burlington & Quincy Railroad Company, and you gave the figures shown in the report of the State Board of Equalization: did you get your figures from that report?

A. Yes sir.

Q. I believe that report was the report of the Board for the year 1906, wasn't it?

A. Yes sir.

Q. And upon the property owned by the railroad companies on the 1st of June, 1905?

A. The return so reads—yes sir.

Q. On page 44 of that report is there recorded an order of the Board in regard to the assessment of the railroad property following, from which you obtained the figures that you gave in answer to Mr. Hagerman, beginning with the words "On motion the Board proceeded to assess, adjust, and equalize the value, etc"?

A. Yes sir, that matter is on page 44.

Mr. KENNISH: We desire to offer in evidence that portion of page 44 which reads as follows:

1897 "On motion, the Board proceeded to assess, adjust, and equalize the value of rolling-stock, road-bed and superstructure, and "all other property" mentioned in laws of 1901, Section 2, Page 232, per mile, and the aggregate value of buildings of the following Railroad and Railway Companies, on the 1st day of June, 1905, for the taxes of 1906, and having heard all the evidence in relation to the same, by unanimous vote fixes the distributable value per mile of the rolling-stock, road-bed and superstructure, and "all other property", and the aggregate value of the building of said railroads and railways as follows:"

Q. Then following that, Mr. Taliaferro, is the record of the State Board of Equalization, from which you gave the assessed value of the Chicago, Burlington & Quincy Railroad Company, in answer to Mr. Hagerman's question?

A. Yes sir. The figures I used were taken from page 103.

Q. In the proceedings, following the language I have just read into the record?

A. Yes sir.

Mr. HAGERMAN: I do not know whether it clearly appears in the record, but it ought to appear. I thought it did originally, but Mr. Ladd says that the stipulation about it was not recorded: That the same stipulation should apply in this case as in the Missouri Pacific, that is, that the Board in making its assessment made it upon a one-third valuation.

NOTE: It is agreed between the parties that the basis of the assessment is upon the basis of one-third of the value of the property, in the judgment of the Board.

1898 At this point, the usual hour for adjournment having arrived, the further hearing of testimony herein is adjourned until tomorrow, Wednesday, March 27th, 1907, at ten o'clock, A. M.

KANSAS CITY, MO., *March* 27, 1907.

Met pursuant to adjournment as above on Wednesday, March 27, 1907, at ten o'clock in the forenoon.

Present: Parties as before; when the following proceedings were had:

Direct examination of Mr. A. P. TALIAFERRO, Continued, as follows:

The MASTER:

Q. Referring to your Exhibit 36, introduced yesterday, I understand that in compiling this exhibit you dealt only with such freight handled by the Chicago, Burlington & Quincy Railway Company, that went through, or into, or out of the state of Missouri?

A. Yes sir.

Q. You did not deal with any freight that did not in some manner touch the state of Missouri?

A. That is correct, sir.

Q. Take line 20 in this Exhibit: let me see if I understand what you mean by that line: you take the total revenue derived from all interstate less than carload freight, and you then compute the amount per ton per mile received on all this freight. By separating this revenue per ton per mile into state and interstate, you find that 48.93 per cent of it is interstate, and the balance, 51.07 per cent, is state: is that correct?

1899 A. No sir.

Q. Just explain that item.

A. The figure on line 11, in column 8, being 2.2816 cents, is 48.93 per cent of the figure on line 15, in column 8, being 4.6634 cents.

In other words, the revenue per ton per mile on the state less than carload business is more than twice as great as on the interstate less than carload business.

Q. You use the term "ratio" on this exhibit: You mean of the things compared, 48.93 per cent appertains to the one, and 51.07 per cent appertains to the other?

A. No sir. One is 48.93 per cent of the other. The state less than carload revenue being 100 per cent, the interstate less than carload revenue figure is 48.93 per cent.

Mr. HAGERMAN: He does not mean that the less than carload interstate freight is 48.93 per cent of all the less than carload freight.

The MASTER: That is what I cannot understand.

Mr. HAGERMAN: Let him give you the figure he divides, and the divisor, and you will see.

The MASTER: He uses the term "ratio" all along, and that is confusing.

Mr. HAGERMAN: Reading this, at first blush you will think that the 48.93 per cent represented all the less than carload stuff that was interstate; that is misleading.

The MASTER: That is what I want to understand.

The WITNESS: The exhibit says it refers to the ton mile figures.

1900 Mr. HAGERMAN:

Q. What percentage of all less than carload business is the less than carload interstate? It would be somewhere in the neighborhood of thirty per cent, wouldn't it?

A. On the revenue basis, yes.

Q. On the ton mile basis, what is it?

Mr. LADD:

Q. Have you that figured up on the basis of Mr. Hagerman's question?

A. I understood him to ask what the less than carload state business amounted to, as compared with all the less than carload.

Mr. HAGERMAN: No, I didn't.

One hundred per cent represents all the less than carload business, doesn't it?

A. Yes sir.

Q. What percentage of that is interstate less than carload?

The MASTER: That is the very thing that confuses me. It starts out with ratio, and ends with per centage.

Mr. HAGERMAN:

Q. How do you reach this 48.93 per cent? What is the sum you put down to divide?

A. You put down 2.2816 cents.

Q. That is line 11, column 8?

A. Yes sir.

Q. That is the less than carload interstate business?

A. Yes sir, the average amount received per ton per mile, as shown in line 11 of column 8.

Q. Divide that by 4.6634, as shown in line 15 of column 8: is that what you do?

1901 A. Yes sir.

Q. Suppose you wanted to find out what percentage of the whole that 2.2816 was, how would you divide that? You would add the 2.2816 to the 4.6634, and get the same total, wouldn't you?

A. No sir, you couldn't do that. You would have to take the revenue per ton per mile on all less than carload business, shown on line 19 of column 8.

Mr. LADD: What he says is this: That 2.2816 cents is 48.93 per cent of 4.6634 cents. That is what it means. That is, the 2.2816 cents in line 11 of column 8 is 48.93 per cent of the 4.6634 cents in line 15 of column 8.

The MASTER: But line 20 does not seem at all clear to me——

Mr. LADD: You think the word "ratio" is unhappily chosen?

The MASTER: It certainly seems so to me. He finds the answer to the written problem, 48.93 per cent. Of course, "per cent" means so much on the 100. If that is 48.93 per cent, what represents the balance of the 100 per cent? I take it, of course, that it represents the other side of the equation, and if the 48.93 per cent represents the revenue per ton per mile on less than carload interstate business, the other must represent the less than carload state business. That would seem to be obvious.

The WITNESS: That would be true, if so much of the state less than carload figure is set off against the interstate. The remainder will be 51.07 per cent.

Q. Does not the reading of line 20 clearly imply that, and doesn't it mean that when taken literally? I cannot under-

1902 stand it any other way.

A. We didn't intend it to mean that. I am sorry we did not make it clear.

The MASTER:

Q. Take line 24 on the same exhibit, and explain that? There

you are evidently comparing the revenue derived from all carload interstate freight, with that from state less than carload freight?

A. Yes sir. We just made various showings there. There is no particular object in doing it, except to set out the figures in case they were needed.

Q. What are the two figures in the column above there, that you were comparing with line 24?

A. The figure on line 10 of column 8, and the figure on line 15 of column 8.

The MASTER: It is undoubtedly lack of early training on my part, but I wish you to appreciate that I do not fully understand this.

Mr. HAGERMAN:

Q. What do you claim is the result of this figure in line 25?

A. We claim the rate per ton per mile on state freight is more than twice as great as the rate on interstate; and the rate per ton per mile on less than carload freight, is many times more than on either kind of carload freight.

Q. What point do you want to make about those?

A. That is the only point.

Q. That is, there is more revenue received per ton per mile from the state than the interstate business?

A. Yes sir; that the revenue per ton per mile is greater
1903 on the state than on the interstate business.

Mr. HADLEY:

Q. You state in line 20 the ratio per ton per mile on the different classes of freight therein scheduled: would it be equally in demonstration of your proposition if you would state it this way: that the revenue per ton per mile on less than carload state freight is twice as much, practically, as the revenue per ton per mile on less than carload interstate freight, as per line 20?

A. Yes sir.

Q. Then the ratio between the revenue per ton per mile on less than carload interstate freight, and the revenue per ton per mile on less than carload state freight—You have simply stated the reverse of the proposition?

A. Yes sir.

Q. That the revenue per ton per mile on the less than carload interstate freight is less than half as much as the revenue per ton per mile on the less than carload state freight. Why would it not be clearer to state it the other way, stating the larger as many times as it is, than the smaller? Wouldn't that be clearer?

A. I think probably it would. We put this on the first exhibit we put in, and we followed that form.

Q. You could put it, instead of stating ratio: "Line 20, Revenue per ton per mile on less than carload state freight is a little more than twice as much as the revenue per ton per mile on interstate less than carload freight?"

A. Yes sir.

The MASTER:

Q. Isn't it a fact that the use of the word "ratio" in that
1904 connection is very unhappy? Does it convey the meaning you intend? This would seem to indicate that you are comparing the revenue per ton mile on less than carload interstate freight, with the revenue per ton per mile on less than carload state freight.

A. That is just what we intended to do.

Q. Very well, then, if you are comparing those two sums, and the answer is 48.93 per cent, it does seem to me the other must be the balance of 100 per cent. I cannot reach any other conclusion from the use of the word "ratio."

Gen. HADLEY: Per cent of one hundred?

The MASTER: Yes, when the answer is in per cent. I confess I cannot look at this exhibit, and tell which particular figures you compare, as you explain it. It is doubtless perfectly clear to you, and to any professional accountant, but it is very confusing to me.

Mr. LADD: I will tell you what we will do. We will put at the foot of this exhibit: "By the above is meant that the figures on line 11 of column 8, the amount is 48.93 per cent of the figures (mentioning them) in line 15 of column 8." That will explain how he reaches it.

Gen. HADLEY: Why not put it this way: "The revenue per ton per mile on less than carload state freight is two cents and a fraction more than the revenue per ton per mile on interstate less than carload freight."

Mr. HAGERMAN: The commonsense way of doing this, (and if you are not going to change this I want to do it on cross-examination) would be to say that the total carload business was so much, and of that it was so and so much per cent.

1905 The MASTER: I would understand that perfectly. But that is not what he is trying to get at at all.

Mr. HAGERMAN: His figures do not get at it that way, but that is what the exhibit means, when you read it.

Mr. KENNISH: Wouldn't the word "per cent" put in there instead of "ratio" solve the difficulty?

The MASTER: I do not know, but at all events that is the confusing feature of the exhibit.

Mr. LADD: If it will make it any clearer, we can change the word "ratio" to "per cent."

Mr. HAGERMAN: There is no misunderstanding now about what the witness means.

The MASTER: No, it has been explained in the record now.

Mr. LADD:

Q. I wish you would look again at Exhibit 36, Mr. Taliaferro: something was said yesterday about the proportion of the less than carload business; I refer now to the tonnage. You haven't it figured out on this Exhibit 36, but I want to ask you if you have it figured out based on Exhibit 36?

A. Yes sir.

Q. What is the proportion, in tonnage, between the carload and less than carload interstate business, as shown by column 1 of Exhibit 36?

A. Using the figures shown in column 1, lines 10, 11 and 12, we find that the carload business was 95 per cent, and the less than carload business 5 per cent.

1906 Q. That is interstate business?

A. Yes sir.

Q. What was the percentage of state carload business, and less than carload business, as shown by the same column?

A. Carload, 90.41 per cent; less than carload, 9.59 per cent.

The MASTER:

Q. Those figures do not appear on the exhibit?

A. No sir.

Mr. LADD: That is just a computation he has made by comparing the figures in column 1.

The WITNESS: They are based on figures in lines 14, 15 and 16, column 1.

Q. That is to say, looking at this exhibit again, line 10, which shows 516,878 tons of carload freight, is 95 per cent of 544,077 tons, in line 12, which is the total interstate: is that right?

A. Yes sir.

Q. And line 14, 78,169 tons, is 90.41 per cent of the figure shown in line 16, being the total state freight, 86,458 tons: is that right?

A. Yes sir.

Q. And line 15, 8,289 tons less than carload, is 9.59 per cent of the 86,458 tons in line 16?

A. Yes sir.

The MASTER: It does seem to me that if those figures are important they ought to appear upon the face of the exhibit, or in some addenda to this exhibit, because I cannot search through the record to find those figures.

1907 Mr. LADD: We will either put them on the face of the exhibit, or prepare them in the form of a supplement to it.

Q. What percentage is the state less than carload business of all the less than carload business, as shown by Exhibit 36?

A. Based on the number of tons, it figures 23.35 per cent.

Q. That is of the tonnage?

A. Yes sir.

Q. What percentage is the state less than carload business, on the tonnage basis, of the second-class interstate less than carload business, on the same basis?

A. 41.64 per cent.

Cross-examination.

By Mr. HAGERMAN:

Q. You emphasize "on the tonnage basis:" what are those figures on the revenue basis?

A. They appear in our exhibits 37 to 40.

Q. Give it to me. You said the state less than carload was 23.35 per cent of all less than carload, on the tonnage basis, didn't you?

A. Yes sir.

Q. Now what was it on the revenue basis. I just want to get a running glimpse of what the difference is. You divide the $130,000 into something?

A. Into the $36,476.99. It is between 27 and 28 per cent.

Q. Exhibit 36: You know nothing about columns 1, 3
1908 *or* 6, those being the figures that were handed you by Mr. Hamilton?

A. Yes sir; except that in a general way I know how they were prepared. I had nothing to do with the preparation.

Q. You had nothing to do with taking them off, or finding out as to their accuracy?

A. No sir.

Q. In the preparation of Exhibit 36, you have taken the figures in those columns, as returned to you by Mr. Hamilton; and as to the other matters you made your calculations?

A. Yes sir.

Q. Do you know how they deal with the live stock question in the Kansas City stock-yards, in Exhibit 36, and whether they treat it as state or interstate business?

A. In one direction it was treated as state, and in the other as interstate business; but I am not clear as to just which was which.

Q. Why did you, in compiling your Exhibit 19 in the Missouri Pacific case, treat it all as interstate, and now in the Burlington case treat it in another way altogether?

A. Because in the case of the Missouri Pacific Railway the loading and unloading pens were all in Kansas. I am informed that the Burlington Railway Company's pens, for either loading or unloading, are in Missouri, and the other pens are in Kansas.

Q. So, arbitrarily, you treated everything, either coming or going, into or out of the stock-yards, as interstate, and vice versa as state business?

A. Yes sir, that was the arrangement made with the Bur-
1908 lington people in Chicago.

Q. The Burlington people gave it to you just exactly as you wanted it. You were having this statement compiled upon a certain theory. That is the way it was done, isn't it?

A. Yes, sir, that is the way it was done.

Q. Do you know whether it was business into the stock-yards, or out of the stock-yards, that was put into the statement as state or interstate?

A. No sir. Mr. Hamilton will have to give you that information.

Q. Do you know how much that amounts to, the part that was put in as interstate?

A. No sir.

Q. You have no idea about that?

A. No sir.

Q. If you wanted to apply your figures in Exhibit 36 to the revenue shown in Exhibit 1 for the year, and wanted to get the total number of ton miles of interstate business, you would divide the interstate freight earnings by what figure, in your Exhibit 36?

A. Making no separation now between carload and less than carload?

Q. I don't know whether it makes any difference or not.

A. It would not make any difference. That is, it would not if the proportions of carload and less than carload revenue were the same in the year as in the month.

Q. What I want to get at is, assuming that your Exhibit 36 represents the average amount received per ton per mile,
1910 and the total for the interstate business is as shown in line 12 of column 8, 8.265 mills; Now, applying it to the figures for the year, you would divide that into what sum, to ascertain the number of ton miles?

A. Into the interstate earnings.

Q. Interstate freight earnings?

A. Yes sir, interstate freight earnings.

Q. And so, to ascertain the ton miles of state business, you would make the division by the figures found in column 8, line 16, into the total amount of state earnings?

A. Yes sir.

Q. Upon that basis what would be the percentage as between ton miles?

I will tell you what I want. It is practically the same thing I had Mr. Ludlam do, and if you prefer to have time to do it, you may take it. I would like to have the calculation of that percentage, together with the percentage of tons, which you arrive at by dividing the revenue received per ton, in column 5, using that to divide into the freight earnings, so as to get the number of tons. Make those two calculations for me. I want to get the percentage between those two. But you need not do it right now.

Q. Now, Exhibit 36 in this Burlington case, is that made up on the same basis as Exhibit 19 in the Missouri Pacific case?

A. It is made up on the same general plan.

Q. What are the differences in the method of getting them up?

A. We separated the interstate into two classes.

1911 Q. Is that the only substantial difference in the method of getting them up?

A. Yes sir. We intended to get them up in the same way in all other respects.

Q. There is no difference in the system upon which they are prepared, except that in the Burlington case you show the "through" interstate, as distinguished from "second-class" interstate?

A. Yes sir.

Q. And in the Missouri Pacific case that is not shown: is that correct?

A. That is correct.

Q. In any of your previous exhibits, upon the Missouri Pacific

statements, did you prepare any exhibit bearing any likeness to Exhibit 36 in the Burlington case?

A. Exhibit 19 in the Missouri Pacific case.

Q. In the Burlington case, on Missouri Pacific figures?

A. Yes sir.

Q. What is the number of that?

A. It was filed as Exhibit 27 in the Burlington case.

Q. Have you that before you now?

A. It will be the same as Exhibit 19 of the Missouri Pacific case.

Q. Your Exhibit 27 prepared in the Burlington case is the same as Exhibit 19 in the Missouri Pacific case?

A. Yes sir.

Q. You don't misunderstand me about that, do you?

A. I think I have a rough copy of Exhibit 27. I will get it. (After examining paper.) It is the same.

1912 Q. In nearly every figure a comparison of Exhibit 36 with Exhibit 27 shows a difference between the Burlington and the Missouri Pacific: which of those exhibits do you stand upon as the basis upon which you submit your theories to this Court?

Mr. LADD: We object to that question. Exhibit 19 is the showing of the Missouri Pacific for the month of October. And Exhibit 36 is the showing in the Burlington case for the month of September, 1906.

The MASTER: Yes; and besides that, it would be perfectly competent to submit two different theories, and argue one or both, when you come to submit the case. The witness could not be compelled, properly, to assume to control counsel in the case, by saying this or that is what he is going to stand on.

Mr. HAGERMAN: I am cross-examining him only as an expert, as to what he is going to stand on. If I am going to prepare my exhibits in this case on Missouri Pacific statements, I want to know it.

The MASTER: The objection is sustained.

Mr. HAGERMAN:

Q. It is a fact, isn't it, that not a single figure in Exhibit 36 compares with your figures in Exhibit 27?

A. I don't know what you mean by "compares." No two figures would be exactly the same.

Q. Or anything like the same?

A. The revenue per ton per mile is very close in many cases.

1913 Q. Let us compare them and see how close they are—if you want to indulge in that. Let us take each column. Take the percentage of total tons: what is it for all interstate in Exhibit 36?

A. 86.29 per cent.

Q. And what is it for all interstate in the Missouri Pacific Exhibit 19?

A. 75.26 per cent.

Q. According to Exhibit 36 the percentage of state freight in

the Burlington case is 13.71 in tonnage; and in the Missouri Pacific case it is 24.74, isn't it?

A. Yes sir.

Q. Now let us take revenue: according to Exhibit 36, the percentage of revenue in the Burlington case is 83.64; and in Exhibit 27 in the Missouri Pacific case it is 74.27, isn't it?

A. Yes sir.

Q. And the state, in Exhibit 36 in the Burlington case, is 16.36, as against 25.73 in the Missouri Pacific case; is that right?

A. Yes sir.

Q. Now, let us take the percentage of ton miles: all interstate, in Exhibit 36, in the Burlington case, is 91.33 per cent, isn't it?

A. Yes sir.

Q. As against 86.02 in Exhibit 27?

A. Yes sir.

Q. And as to the state, in Exhibit 36, it is 8.67, as against 13.98; that is right, isn't it?

A. Yes sir.

1914 Q. Then, upon the interstate average amount received per ton per mile, in Exhibit 36 it is 8.265 mills, as against 7.796 mills in Exhibit 27 in the Missouri Pacific?

A. Yes sir.

Q. And the state is 1.7 cents in Exhibit 36?

A. Yes sir.

Q. As against 1.66 cents in Exhibit 19, isn't it?

A. Yes sir.

Q. And the average length of haul, in Exhibit 36, of interstate, is 135 miles, as against 105 miles in Exhibit 27, the Missouri Pacific case?

A. Yes sir.

Q. And the average haul of the state freight, in the Burlington case, as shown by Exhibit 36, is 81 miles, and in the Missouri Pacific case, as shown by Exhibit 27, is 52 miles?

A. Yes sir.

Q. Those are the summaries of those two exhibits, aren't they, as far as those totals are concerned?

A. Yes sir.

Q. What exhibit in the Missouri Pacific case compares with your Exhibit 37 in the Burlington case?

A. No. 30, I think.

Q. And what compares with Exhibits 38, 39 and 40? Anything in the Missouri Pacific case?

A. No. 30 in the Missouri Pacific case would compare, I think, with Nos. 37 and 39 in the Burlington case.

Mr. LADD: If you are not certain, better look and see.

1915 A. Exhibit 30 in the Missouri Pacific case is the one in which all of the operating expenses are increased, and that is made up on the same theory that Exhibits 37 and 39 in the Burlington case are prepared.

Mr. HAGERMAN:

Q. That is to say, Exhibits 37 and 39 in the Burlington case are prepared on the same theory as Exhibit 30 in the Missouri Pacific case: that is right?

A. Generally speaking, yes.

Q. So the criticisms we would level at the system adopted in Exhibit 30 in the Missouri Pacific case would apply to Exhibits 37 and 39 in the Burlington case, if well founded?

A. The exhibits I speak of were all prepared on the same theory.

Q. You heard the objections I made to Exhibit 30: the criticisms, if well founded—not compelling you or asking you to say whether or not they are—would equally apply to Exhibits 37 and 39, wouldn't they?

A. So far as applicable, they would.

Q. The criticisms would apply to them. I don't mean to say the figures would work out exactly the same. But if the criticisms are well founded, as made to Exhibit 30, they would be applicable to Exhibits 37 and 39?

A. I suppose so.

Q. What do Exhibits 38 and 40 in the Burlington case compare with in the Missouri Pacific case?

A. With Exhibit 31 in the Missouri Pacific case.

Q. That is to say, Exhibits 38 and 40 are to be compared with Exhibit 31 in the Missouri Pacific case, and are gotten up
1916 on the same basis?

A. Yes sir.

Q. And the same thing would be true as to criticisms levelled at Exhibit 31 as you state to Exhibit 30, wouldn't it?

A. Yes sir.

Q. Starting with your Exhibit 37, you undertook to figure out here, on certain bases, what you claim to be the earnings of the company, upon certain theories: where is there a single fact in the entire exhibit, that you do not assume?

A. We do not assume anything as to the total earnings, and total expenses.

Q. That is to say, the total of the earnings, divided as they are in Exhibit 1, are taken literally?

A. Yes sir.

Q. You do not make any division of the expenses, but you deal with the expenses as a whole, as contained in Exhibit 1: is that right?

A. No sir. The expenses we deal with are shown in Exhibit 6, being the freight expenses; and we had no separation as between state and interstate.

Q. There is no difference between Exhibit 6 and Exhibit 1, as to the expenses, except that Exhibit 6 is a detail of the generalizations of the expenses in Exhibit 1?

The MASTER: Who filed that exhibit?

Mr. HAGERMAN: We filed it. Exhibit 6 does not show, as I understand, all the expenses; Exhibit 1 does. Exhibit 6 itemizes cer-

tain of the expenses that are contained in Exhibit 1. Isn't that the way of it, Mr. Taliaferro?

1917 A. Yes sir, what are known as operating expenses.

Q. So you do take as true, for the purpose of your Exhibit 31, that the freight earnings, state and interstate, are as set forth in Exhibit 1?

A. For the purposes of Exhibit 37, you mean?

Q. Yes, you take that as true?

A. Yes sir.

Q. The other figure you take as true is the total expenses set forth in Exhibit 1, as certain portions thereof are itemized in Exhibit 6?

A. We took the expenses shown by Exhibit 6. We have no way of identifying that, with Exhibit 1.

Q. Exhibit 6, you say, is an itemization of certain items in Exhibit 1: what items?

A. Of the operating expenses.

Q. That is, "Conducting transportation"?

A. Maintenance of way and structures.

Q. And Maintenance of equipment?

A. Yes sir, and general expenses.

Q. It is everything that is contained in Exhibit 1, except taxes, and a proportion of the rentals, isn't it?

A. That is my understanding. But there is no separation as between freight and passenger, in Exhibit 1.

Q. Exhibit 1 does not separate itself as between freight and passenger, and Exhibit 6 does: is that it?

A. That is the idea; yes.

Q. There is no separation, even in Exhibit 6, as between state and interstate freight?

A. No sir.

1918 Q. You take, then, the sum total of expenses, as thus shown, which are the Company's figures, and take them to be correct?

A. Yes sir.

Q. That is the fact with which you start?

A. Yes sir.

Q. The first thing you assume, and without the assumption your paper would not be worth the time of preparing it, is that a certain proportion of this interstate business was derived from carload, and a certain proportion from less than carload freight, isn't it?

A. Yes sir. We assumed that because those are the proportions shown by Exhibit 36, for the month of September, 1906.

Q. That is to say, the proportions you assume for the entire year are based on the proportions in September of one year?

A. Yes sir.

Q. Have you any idea, or any figures to show, what proportion of the whole year's business September is?

A. No sir.

Q. Have you any idea, or have you ever stopped to consider or even think about it, that September is a much greater interstate

business month than state business, in the way that that is when grain is actively moving to the large lakes?

A. That may be so, but I do not think that affects our Exhibits 37 to 40 in the slightest.

Q. We will see about that. But the point I am getting at is you have taken, and assumed to be true for the year, that
1919 which was true for the month of September, 1905, haven't you?

A. As to the proportions of carload and less than carload yes.

Q. Well, what is the percentage upon the revenue basis alone for the entire year, as shown by Exhibit 1—practically 20 per cent, isn't it?

A. My recollection is 19.11 per cent.

Q. You are always recollecting in favor of the State: it is 19.76, to be accurate, isn't it?

A. 19.11 is my recollection.

Q. Well, figure it out.

A. (After figuring:) 19.67.

Q. And in your Exhibit 36 it is only 16.36?

A. Yes sir.

Q. But you never made any inquiry to ascertain what multiples ought to be fairly used on Exhibit 36, to make it fairly representative of a year's business, did you?

A. I started to say awhile ago, Mr. Hagerman, that as we used the actual earnings for the year, as shown by Complainant's Exhibit 1, and only used from Exhibit 36 the average revenue per ton per mile, we do not go wrong, to my mind, in figuring out the number of ton miles in 1905.

Q. I will assume that you will not concede that you have gone wrong on any point.

A. I am trying to answer your specific question.

Q. I am trying to find out if you attempted to figure upon any proposition, or based the figures in Exhibit 36 only on the
1920 year's business, by using any kind of a multiple that would fairly represent the proportion?

A. We didn't have to.

Q. I know you didn't have to, but did you do that?

A. No sir.

Q. Did you use any figures on that basis?

A. No sir. I say we had what purported to be the actual earnings in 1905. They appear in Exhibit 1. We did not have to build up the total earnings from the September showings, and we did not do it.

Q. Did you do anything toward figuring or ascertaining what is a fair proportion to allow for September, of the year's business: did you do it, or didn't you do it?

A. We didn't do it, because we had no occasion to do so.

Q. And you didn't do it, although your attention was directed to it, and your examination took some time, in the Missouri Pacific case, on that subject?

A. Yes sir, but we did not think you were on the right track in that.

Q. And you cannot give us any information now to enlighten us as to how September of any year would compare with the entire year's business?

A. No sir, I cannot. Because this is September, 1906, and we have no total figures for the year 1906.

Q. That is the only answer you have to make about it?

A. That is all.

Q. The next assumption you make, and as I understand you everything else is an assumption, is the state freight earnings upon the same basis and in the same way as the interstate?

1921 A. Yes sir.

Q. The next assumption after that is that the earnings from the interstate carload business amounted for the entire year to .74 cents per ton per mile: You assume that to be true, do you?

A. Yes sir.

Q. Did you make any calculation or any assumption upon the basis of what it amounted to per ton?

A. For the year?

Q. Yes, in this calculation in Exhibit 37, or any other time?

A. No sir.

Q. That is solely upon the ton mile basis, and solely upon that assumption?

A. Yes sir.

Q. And that assumption goes upon the basis that .74 cents is applicable to the entire year's business?

A. Yes sir.

Q. The next thing is that in the same method you make the same kind of an assumption as to the state carload business?

A. Yes sir.

Q. And the same thing applies, only changing the figures, as to the less than carload, both state and interstate?

A. Yes sir.

Q. Why did you assume that the operating expenses of the state carload business were twice as much per ton per mile as the total operating expenses?

A. Merely for the purposes of this statement?

1922 Q. Do you mean to admit that it is?

A. No sir.

Q. Then the statement is false, so far as it assumes—it makes a false assumption so far as it assumes that the excess is twice as much per ton per mile?

Mr. LADD: I submit that is not a fair question.

The MASTER: That is not correct.

Mr. HAGERMAN: It is a false assumption, unless the witness will say it is correct.

The MASTER: I do not think that is correct cross-examination. It is not a false assumption in the sense the question implies, that is,

that it misleads or misstates anything. It simply assumes something that the witness has admitted is not a fact, but is assumed for the purposes of this statement.

Mr. HAGERMAN:

Q. Can you point out in the testimony anywhere, any opinion upon which to base that assumption in this case?

A. I do not recall any at this moment.

Q. You do not believe it is true?

A. I think it is too high.

Q. Nobody else has sworn to it?

A. I do not recall.

Q. For what purpose, in the way of comparison, did you figure that at twice as much?

A. Just to show where we would come out if that were the case.

1923 Q. That is the only purpose you had in view?

A. Yes sir.

Q. Why didn't you figure it at three times, to see where you would come out?

A. That would mean that many more statements, and we didn't stop to do it.

Q. Why didn't you figure it at one and a half times?

A. We might have done it.

Q. That would be more favorable to you?

A. Yes sir.

Q. And you didn't figure it at three times because it would have made a much worse result for the state than all these other statements: isn't that true?

A. Certainly.

Q. Where you say three, five or seven times as much per ton per mile, is the same observation true as to that, that you assumed that?

A. That it was done for the purposes of this statement, yes.

Q. Everything you have said as to twice as much is applicable to these other theories?

A. I think I have testified that in my opinion the less than carload business might cost three times as much per ton per mile as the interstate carload business. There is more reason for that assumption than there is for the other.

Q. That is to say, you are willing to testify that so far as less than carload business is concerned, that would cost three times as much?

1924 A. I won't say it would cost; I say in my judgment it would.

Q. What is your opinion about it?

A. It might cost that much.

The MASTER: Three times as much as what?

A. Three times as much per ton per mile as the interstate carload business.

Mr. HAGERMAN:

Q. You did not make any assumptions or comparisons with anything but the interstate carload business?

A. No sir.

Q. Are you willing now to say that it does cost three times as much?

A. Per ton per mile?

Q. Yes.

A. To do the less than carload business as to do the interstate carload business?

Q. Yes.

A. I think it would.

Q. What about five times?

A. I think that is too high.

Q. Have you in mind any witness who testified five times, or seven times?

A. Not on the less than carload business alone, no sir.

Q. And that you don't believe in yourself?

A. No sir.

Q. Therefore, excepting as to the three times, which you do believe in, there is nothing upon which to base your five times, or seven times, except as an illustration?

A. That is all.

1925 Q. The next thing you assumed as expenses to be divided are the total operating expenses, and that, as you say, includes the taxes?

A. Yes sir.

Q. How would you divide taxes, and why not treat them as part of the expenses?

A. Because we were dealing only with the operating expenses, so called.

Q. I know, but do you regard taxes as part of the expenses?

A. Not what are generally known as operating expenses.

Q. And you do not include rentals of any kind?

A. No sir.

Q. Exhibit 39: that is the one to take in connection with Exhibit 37, isn't it?

A. Yes sir.

Q. Because it pertains to the same subject, except that it makes the assumption on different amounts as representing the extra cost on different theories?

A. No sir, the same increased figures for cost, but only the conducting transportation part of the expenses increased.

Q. What I am trying to get at is, we ought to consider for the purposes of a better understanding, Burlington Exhibit 37 in connection with Exhibit 39?

A. I beg your pardon, I am wrong about that. That is true. In Exhibit 39 the through interstate and the second-class interstate are separated.

1926 Q. That is to say, Exhibits 37 and 39 are practically the same, except that you do separate, upon the basis of your Exhibit 36, the through and second-class interstate business?

A. Yes sir.

Q. Everything we have said, then, about Exhibit 37 would apply to Exhibit 39, without going into detail about it any more?

A. So far as I can see at this moment, yes sir.

Q. There is no other difference that you have in mind between those two statements?

A. There is no difference, as you say, in the number of times we increase the cost.

The MASTER:

Q. Are the terms "operating expenses" and "conducting transportation" synonymous?

A. No sir.

Mr. HAGERMAN: I am coming to that on the next exhibits.

Q. Here you consider as operating expenses, for the purposes of these statements, everything except taxes and rentals?

A. Yes sir.

Q. The other difference between Exhibits 37 and 39 is upon the basis of the extra cost?

In Exhibit 37 the first column is upon the basis of the state carload costing twice, and all less than carload three times as much per ton per mile as all interstate carload business; whereas in Exhibit 39 it is upon the basis of the second-class interstate carload costing one and a half times as much per ton per mile, the state carload twice, and all less than carload three times as much per ton per mile as the through interstate carload: that is the other difference?

1927 A. Yes sir.

Q. Upon what do you base that one and a half times? Upon any testimony that you can call to mind that the second-class interstate carload costs one and a half times as much as the through interstate carload?

A. None that I know of.

Q. What is your opinion about it?

A. I never formed any.

Q. Have you any now?

A. No sir.

Q. The next one is, that is a new analysis, and not contained in Exhibit 37—that the state carload costs twice as much as the through interstate carload: have you any testimony upon which to base that?

A. That is the same assumption that is contained in Exhibit 37.

Q. You cannot recall any testimony upon that: have you any opinion about it?

A. The only opinion I have is that as to all less than carload, and all interstate——

Q. And what is that,—fifty per cent, wasn't it?

A. As a maximum.

Q. You never gave a minimum; and when the fellow who is the

expert on the other side says "not to exceed fifty" it is fair to say that allowing for everything, fifty is your estimate?

A. I said I thought it would be less than fifty; but might go to fifty.

1928 Q. If pressed right down to the degree of fifty, you would say fifty or more?

A. No sir, I would say it might go to fifty.

Q. That is the best you could say about it?

A. That is all.

Q. It might go to fifty, and you couldn't give any other answer?

A. I couldn't give any more accurate answer than that, I believe it to be less than fifty, and not more, under any circumstances.

Q. While you say it might go to fifty, and might be or is less, you have not any figure less to fix it at?

A. No sir.

Q. And therefore, as between man and man, Mr. Taliaferro, the fairness of your testimony would be fifty per cent extra cost for doing all the state buisness, as compared with all the interstate?

A. I do not see how that construction could be put upon it, but it might be.

Q. What construction could be put upon it other than that—This is upon your oath and your conscience?

A. I tried to make my answer clear.

Mr. LADD: I don't think it is necessary to refer to the witness' conscience.

Gen. HADLEY: How can the witness give the construction that Mr. Hagerman is going to put upon his testimony?

The MASTER: I think the examination is fair.

A. If I thought it could be worked out exactly, I would try to do it, and give that figure; but, as I do not think it

1929 can be worked out exactly, I say, from all the study and thought I have given to the subject, I think it would cost less than fifty per cent more per ton per mile to do the state business than the interstate business.

Q. Taking it as a whole?

A. And that fifty per cent would be the maximum increase.

Q. And you have not any minimum, or any figure less, to go to?

A. No sir.

Q. And that is the way you are willing to leave it?

A. Yes sir.

Q. And that is dealing with the state freight business as compared with the whole of the interstate?

A. Yes sir.

Q. Is there any other difference, so far as Exhibits 37 and 39 are concerned, between the two, than those you have pointed out?

A. I think you have called attention to all of them.

Q. The next two that ought to be considered together would be Exhibits 38 and 40: they ought to be considered together, for the purpose of comparison, ought they not?

A. Yes sir.

Q. Exhibit 38 differs from Exhibit 37, first, in that you take the items of "Conducting transportation" from the operating expenses, instead of all the operating expenses, as you described them before?

A. We took that proportion of the operating expenses, and increased it.

1930 Q. That is what I am trying to say. I think we mean the same thing. In dealing with the expenses in Exhibits 37 and 39, you dealt with the operating expenses, as shown in Exhibits 1 and 6, and that included all the expenses of the company, except taxes and rentals: that is right, isn't it?

A. I would say Exhibit 6, rather than Exhibits 1 and 6.

Q. Exhibit 6, then?

A. That is where we got our figures.

Q. I am referring back to Exhibit 1, only because it has the sum total in it, and is the thing we start with in making our comparisons.

The first difference in Exhibits 38 and 40 is that in dealing with expenses, instead of dealing with the total operating expenses, you deal with such portions of the operating expenses as by Exhibit 6 are shown to constitute "Conducting transportation": is that right?

A. No sir.

Q. What is it?

A. We deal with all the operating expenses, as shown by Exhibit 6.

Q. Not in Exhibit 38?

A. Yes sir. But the only increase on the state business, and on the less than carload business, is on that portion of the expense known as "Conducting transportation".

Q. Let us get that, then. That is the difference?

A. Yes sir.

Q. The difference between the items of "all operating expenses", and "conducting transportation" is that maintenance

1931 of way and maintenance of equipment are excluded?

A. Yes sir.

Q. And general expenses?

A. General expenses are excluded, too.

Q. And everything else makes up the items of what you call "Conducting transportation"?

A. Yes sir. The operating expenses are divided into four general heads.

Q. What are they?

A. Maintenance of way and structures; maintenance of equipment; conducting transportation; and, general expenses.

Q. So far as expenses are concerned, the only difference between Exhibits 38 and 40, and 37 and 39, in dealing with the expenses is, that when in your assumptions as to the increase you deal with expenses, you deal only with the proportion thereof constituting "conducting transportation": that is right?

A. Yes sir.

Q. What is the next difference between Exhibits 37 and 38?

What I want to get at is whether all the assumptions you made in Exhibit 37 are here made, and what additional ones are made, and what changes there are, if any?

A. The assumptions in Exhibit 38 are the same as those in Exhibit 37, except as to the increased cost.

Q. And that is in the 7th and 8th items?

A. Yes sir.

Q. And the difference there between Exhibits 38 and 37 is simply the application of the extra cost to the "conducting
1932 transportation" instead of "operating expenses"; is that right?

A. Instead of to "all operating expenses".

Q. You use the same multiple in both exhibits?

A. Yes sir.

Q. Now, take Exhibit 40, and that in the same way applies to Exhibit 39, except that you use the multiples that were used in Exhibit 39, when you come to Exhibit 40, by applying them to "conducting transportation" alone?

A. Yes sir.

Q. That is the whole difference, isn't it?

A. Yes sir.

Q. Those are all the exhibits you produced, aren't they?

A. Yes sir.

Q. You heard Mr. Ludlam's testimony in the Missouri Pacific case, where he said that in ascertaining the valuation of the portion of the property used for carrying state freight, it ought to be divided upon a revenue basis, didn't you?

A. I believe he said that.

Q. What would you say about that, Mr. Taliaferro? What is your judgment about it?

A. I haven't any.

Q. You haven't any judgment at all?

A. No sir.

Q. That is to say, so far as you are concerned, and so far as you are an expert, you haven't any judgment whatsoever as to how that ought to be divided?

1933 A. I haven't any conviction about it.

Q. And you haven't any way to suggest about how to divide it?

A. I should not attempt to make any suggestion about it. No sir.

Q. You also heard Mr. Ludlam's testimony in the Missouri Pacific case, going into some detail as to the portion of the terminals which was in any wise affected by the haul: you remember that subject, and your going into it?

A. Yes sir.

Q. What portion of this terminal expense do you say is not affected by the length of the haul at all?

Mr. LADD: I object to that question. That is not in the Burlington case.

Mr. HAGERMAN: We will get it in the Burlington case.

The MASTER: The objection is over-ruled.

Mr. LADD: There is no question of the Kansas City terminals in the Burlington case.

Mr. HAGERMAN: All these men who talk about the ton mile basis, Ludlam and Taliaferro, they place the sole justification for it upon the difference in the length of the haul.

The MASTER: I think it is perfectly fair.

Mr. HAGERMAN:

Q. I am simply directing your attention to Mr. Ludlam's testimony, to direct your mind quickly to the point.

What is your judgment about that portion of the expense not affected by the length of the haul at all?

A. I think the actual expense is not affected by the length
1934 of the haul, but when you consider the length of the haul and spread that expense over it, you have, of course, a different figure per ton per mile on state than on interstate business; and to that extent the length of the haul enters into it, necessarily.

Q. There are listed things, like station service, etc.; you remember the items he listed: would you list any, and say they were not affected by the length of the haul?

A. I would say it might cost one dollar to load a ton of state, or a ton of interstate freight. One might be going fifty miles, and the other one hundred miles. But when you come to spread that expense over the length of the haul, it would be twice as much for the state as for the interstate freight.

Q. Because of the difference in the length of the haul?

A. Yes sir.

Q. The point I am getting at is, would not practically all the terminal expense be the same, regardless of whether it was hauled ten miles or one hundred miles?

A. I would not say that.

Q. Would you deny it?

A. I would say that on two similar shipments, originating at a certain point, the expense might be the same. But, as to the total terminal expense on the two classes of freight, I cannot say that.

Q. Why couldn't you say it, as to the two terminal expenses?

A. Because the further a shipment goes, the more termi-
1935 nal service it gets.

The MASTER:

Q. You would say the cost per ton would be the same on the state and on the interstate shipment?

A. Yes sir.

Q. But inasmuch as the interstate haul is longer than the state haul, the cost per ton per mile would be larger in one case than in the other?

A. Yes sir.

Mr. HAGERMAN:

Q. The shorter the haul, the greater per ton per mile, because not distributed over the great distance?

A. Yes sir, that is what we base our increased cost on.

Q. But the point I am getting at is those terminal expenses would be the same, regardless of the length of the haul, as terminal expenses?

A. I would not say the same, unless they were exactly similar shipments.

Q. Even if they were not, would there be any substantial difference? There was one illustration you gave—I think you referred to that—shipments going through two divisions, for instance, might make a small or slight use of the terminals, which you judged was about one-third of the ordinary terminal expense: is that true? Not a terminating or originating terminal.

A. We said a shipment passing through any terminal would have some use of that terminal.

Q. And you estimated that would be about one-third of the terminal expense, that is, an originating or terminating terminal expense?

1936 A. If it passed through on the company's own rails, and was not interchanged, yes.

Q. You cannot give us what proportion, if any, in your mind, of the terminal expense that is not affected by the length of the haul?

A. I would divide it all on a ton mile basis.

Q. I am not talking about your dividing it upon a ton mile basis: I am asking you the question whether you could give us any idea, or whether you are willing to say that any proportion of the expense is affected by the length of the haul, made more or less?

A. I would not say that the terminal expense on any shipment of state business was the same as on an interstate shipment, because it follows they do not get precisely the same service in the state. One is going out of the state, terminates somewhere else; or is coming from out of the state, and originates somewhere else.

Q. Let us not distinguish between state and interstate, but consider just the terminal charge: is there any terminal charge that, in your judgment, is more or less, in accordance with the length of the haul, and if so, what one is it?

A. I will have to say what I said before. To be the same, it would have to be the same service at one point. If you tried to compare all of the terminal expenses there would be a difference in the total charges on the two shipments and the only way to dispose of that would be to spread them over the length of the haul.

Q. I understand exactly what your theory is, and the Court understands it, and there is no use evading the answer by argu-

1937 ment. You have expressed your opinion that the terminal expense ought to be spread over the entire length of the haul. But what I want to know is, is there any terminal expense that is any more by reason of the shipment going one hundred miles, than there would be as a terminal expense, if it were going ten miles?

A. I have tried to answer it.

Q. Answer it again?

A. I have tried to answer it as well as I can.

Q. I may not be able to understand. Give your answer again, and make it plain to me.

A. Take two shipments destined to two given points, one inside the state, and one outside the state: the expense at the starting point I can see may be the same regardless of the length of the haul. But further than that I cannot go.

Q. I have not asked you anything as between state and interstate business, in or outside of the State; I simply asked you the question whether there is any terminal expense that you can not conceive of, and if so what it is, that costs more because of the length of the haul that is going to be made.

A. If you mean the total terminal expense, I would say yes.

Q. What portion?

A. I would say the intermediate terminals.

Q. I understand your position about the intermediate terminals: but outside of that?

A. On similar shipments it should be the same.

Q. And on the intermediate terminals, your estimate was that that would be about one-third of the originating or terminating expenses?

1938 A. We estimated it at that, roughly.

Q. Now, that terminal expense, Mr. Ludlam said in the Missouri Pacific case, was not dependent upon the length of the haul, whatever it is, and ought to be divided upon a ton basis, and not upon a ton mile basis. What do you say upon that subject?

A. I would divide everything upon the ton mile basis.

Q. You would divide that, too, on the ton mile basis?

A. It works out that way, whether you divide it on the ton mile basis or not. It works out eventually upon the ton mile basis.

Q. You say "it works out eventually upon the ton mile basis": Why upon the ton mile basis? That is not affected by the length of the haul, and the whole theory of the ton mile basis is upon the basis of the ton mile haul. And that is the whole theory of those who advocate it.

A. You can take any expense and spread it over the number of miles hauled.

Q. How do you assume the rentals should be divided? How would you divide them?

A. What do you call "rentals"?

Q. The rentals they pay for the use of the tracks. Lease rentals.

A. You mean small items of rental?

Q. I don't care whether they are small or large if they are rentals paid to other companies. I am asking you for an opinion, assuming that the railroad company has rentals to pay under a lease—how would you divide them?

1939 A. I think according to the use of the tracks.

Q. That is upon a wheelage basis?

A. No sir, I mean according to—I think the ton mile basis would be the most accurate.

Q. That is, assuming one road has rented a track from another

road, and has the entire use of it, you would divide that upon a ton mile basis?

A. It is a very simple matter to keep separate the ton miles of state and interstate business, and I think that would be the better way to divide it.

Q. You would say that, although you heard Mr. Ludlam say he would divide it upon a different basis?

A. No sir, I do not recall that he did.

Q. Mr. Ludlam said it should be divided upon the ton miles moved over the rented tracks, not upon the ton miles throughout the state?

A. The expenses of the rented tracks are usually kept separately, so the ton miles can be kept separate, and you have it all there.

Q. How would you divide it? Would you agree with his statement?

A. That is the way I meant it.

Q. That is all I want to get.

As between the passenger and the freight business, how would you divide the interest charge?

A. I have not any opinion upon that subject.

Q. As between state and interstate, how would you divide the passenger and freight business: have you any opinion upon
1940 that?

A. No sir, I think not.

Q. You haven't any opinion? You would not know what to do with those subjects, would you?

A. I would not say, off-hand, that I would treat them in a certain way—No sir.

Q. You have not given it any thought?

A. We have not been called upon to do that.

Q. Did you ever give any thought to the ton mile basis, or have any occasion to consider it, until this case arose?

A. I have heard of it all my life, and I know it is the basis for making rates, when very low rates are contemplated; and I know the revenue per ton per mile received by the railroads is considered a very important figure, one that is enlightening; and, as soon as I got into this work I felt that was the basis upon which the expenses should be divided.

Q. Did you ever have any experience, or opinion, or occasion for an opinion, upon this subject before you got into this case?

A. No sir.

Q. Would you give us your opinion upon the revenue basis, upon what the increased cost of doing state over interstate business is?

A. No sir.

Q. Why not?

A. Because I do not think that is the proper basis upon which to figure it, nor do I think it is a basis upon which an intelligent opinion can be formed.

1941 Q. Your tables can be prepared upon your revenue percentages, and ton percentages, just exactly as upon the ton mile, if you want to do it?

A. You can take the revenue percentages and make a division of the expense; but I do not think it is the proper way to do it.

Q. How much more would it cost upon the ton basis?

A. I think the ton is the same as the revenue, in that it is not a good basis.

Q. In practical results, it works out, doesn't it, that the revenue basis, and the ton basis, are pretty nearly alike?

A. Yes sir.

Q. Substantially alike?

A. Yes sir.

Q. And very different from your ton mile basis?

A. Yes sir.

Q. And your ton mile basis is dependent upon reducing to an average the entire haul, to get the length of the haul to apply to the entire situation?

A. Yes sir.

Q. As Mr. Ludlam expressed it, the whole ton mile basis rests upon the length of the haul, doesn't it? That is the fact, isn't it?

Mr. KENNISH: That is all improper at this time. The whole matter was gone into when Mr. Ludlam was on the stand. This case was adjourned only for the September way-bills.

Mr. HAGERMAN: You haven't a particle of testimony to rest your case upon, as left before; but it rests upon these state-
1942 ments now produced.

Mr. KENNISH: That was all gone into on the cross-examination of Mr. Ludlam.

The MASTER: To some extent; but he may be permitted to pursue the subject further at this time, if he desires.

Mr. HAGERMAN:

Q. What is your opinion, upon the ton basis?

A. I do not think it is a good or a proper basis.

Q. Regardless of whether you think it is good or proper, how much more does it cost to do the state than the interstate business, upon the ton basis?

A. I would not make any estimate.

Q. Because you do not think it good?

A. Because it does not take into consideration the service given those tons.

Q. You could make it, if you wanted to?

A. No sir.

Q. You could not make it, upon a revenue basis?

A. I would not want to attempt it.

Q. You would not want to give any opinion whatsoever, except upon the ton mile basis?

A. That is correct.

Q. And you would not come any nearer to it than you have already come?

A. I don't know what you mean.

Q. What we were talking about a little while ago; about that fifty per cent.

A. Yes sir.

Q. You prepared from Exhibit 36 and Complainant's Ex-
1943 hibit *i* the number of ton miles, and the percentages, and the number of tons and the percentages, as between state and interstate, by making the divisions from Exhibit 36 into the total revenue shown by Exhibit 1, the same way it was done in the Burlington case?

A. Yes sir.

Q. What is the number of the exhibit?

A. In the Missouri Pacific case the exhibits were 5-a and 19.

Redirect examination.

By Gen. HADLEY:

Q. Can you, if the Master will consent that it may be done, prepare as an addenda to Exhibit 36 a statement leaving out this confusing term "ratio," and expressing the revenue derived per ton per mile upon the different classes of freight therein referred to, and stating it in this way: The revenue derived from state carload business is two or three times (or whatever it may be) greater than the revenue per ton per mile upon the interstate carload business. And the revenue derived per ton mile upon the less than carload state business is two or three times (or whatever multiple it may be) larger than the rate per ton mile and revenue upon the less than carload interstate business.

A. Yes sir.

Mr. HAGERMAN: Why would not Mr. Kennish's suggestion be followed: that is, writing "per cent" instead of "ratio" there on the exhibit?

1944 The MASTER: The suggestion I made is simply this: it seemed to me that the use of the word "ratio" in the connection in which it was used was an unhappy choice of a word. Instead of comparing the two items that were set forth upon the line, as the word "ratio" would seem to indicate was the purpose to do, the result of that comparison made a percentage without reference to relation to each other, and that is what confused me.

Gen. HADLEY: With the suggestion I make, it will show the comparison on the basis of one, two, or three times, or whatever it may be.

1945 T. A. HAMILTON, a witness of lawful age, being duly produced, sworn and examined on the part of the defendant, testified as follows:

Direct examination.

By Mr. S. B. LADD:

Q. Give your name in full.

A. T. A. Hamilton.

Q. Where do you live?

A. St. Louis, Missouri.

Q. What is your age?

A. 33 years.

Q. What business have you been engaged in since you have been at work?

A. In the railroad service until last June.

Q. State what your experience has been.

A. I started back in 1890 with the Canadian Pacific Railroad Company at Toronto, Ontario, as messenger boy. I worked there several months and I went from there to the Chicago & Grand Trunk Railway Company as Junior Clerk in the office of the Assistant General Manager.

Q. How long were you there?

A. About a year.

Q. Then what did you do?

A. I came to St. Louis in 1891, and went to work in the Missouri Pacific Railway Company's General Auditor's office.

Q. In what capacity?

A. In the Freight Accounting Department. The first work I did there was filing tissue copies of waybills as they came
1946 into the office from the road, putting them up in station order for use in the Auditor's office.

I afterwards tabulated those way-bills, for two or three years, to compile an abstract for the basis of checking Agents received reports.

After that, I did miscellaneous work around the office until I left the service.

Q. How long were you with the Missouri Pacific Railway Company?

A. I left the service after being there one and a half years, and went to Houston, Texas, with the Southern Pacific Railway Company.

Mr. HAGERMAN:

Q. When would that take you away from the Missouri Pacific Railway? You went there in 1891?

A. Yes sir, if my memory serves me right.

Q. Then in 1892 you left there?

A. In 1892 or 1893 I left there.

Mr. LADD:

Q. How long were you with the Southern Pacific Railway Company?

A. Two or three months.

Q. Then what did you do?

A. Then I went back to the Missouri Pacific Railway Company.

Q. What did you do with them then?

A. I went into the Freight Auditor's office and went back to the same class of work I had given up when I left the service.

Q. How long did you remain with them after you went back to the Missouri Pacific Railway Company?

1947 A. I left the Missouri Pacific Railway Company, finally, in July, 1900.

Q. Then what did you do?

A. I went from the Missouri Pacific Railway Company to the Illinois Central Railroad Company at East St. Louis.

Q. What did you do there?

A. Rating and billing freight in the outbound department. I was with the Illinois Central Railway Company a little over a year. Then I went from the Illinois Central to the Louisville and Nashville Railway Company.

Q. Where?

A. At East St. Louis.

Q. What were you doing there?

A. Bill clerk and rate clerk and afterwards, chief bill clerk in charge of the outbound, rating Southeastern and Mississippi Valley freight.

Q. How long were you with them?

A. I was with the Louisville and Nashville Railway Company continuously until 1903. In the fall of 1903 I went out to the new terminal of the Iron Mountain, at Bixby, Ill., immediately south of East St. Louis. I was the first man out there in the station, except the telegraph operator, when the station was opened. I stayed there about two months or a little over.

Q. What were you doing during those two months?

A. I was doing nearly all the work, every character of work. Billing freight outbound and revising inbound, and carding cars in the yard, in case of emergency.

Q. You were the agent?

A. No sir, Mr. Kell, was the agent, but I was chief clerk.

1948 But whatever work came up at the new terminal, which was just in process of adjustment, I assisted in doing?

Q. Then what did you do?

A. I was Chief Bill Clerk for the L. & N. Railway. It was understood that I should go back if I wanted to, when I took charge of the Iron Mountain station.

I stayed as Chief Bill Clerk in the office at East St. Louis until May, 1905 and then I was promoted to Chief Clerk in the office of the General Agent of the traffic department of the L. N. Railway Company at St. Louis.

I remained in that position until June of last year when I entered the employ of Haskins & Sells.

Q. You have been with Haskins & Sells ever since, have you?

A. Yes sir.

Q. As an employee of Haskins & Sells have you had anything to do with the investigations growing out of what are called the Maximum Rate cases in Missouri, of which this is one?

A. Yes sir.

Q. I will ask you directly, whether you have been connected with the examination of the way-bills of the Chicago, Burlington & Quincy Railroad Company for the month of September 1906?

A. Yes sir, I was in charge of that work in behalf of Haskins & Sells during its entire progress, until its completion?
Q. When did that work begin?
A. November 10th, 1906.
Q. And where was the principal part of it done?
A. In the Auditor's office of the Chicago, Burlington & Quincy Railroad Company at Chicago.
1949 Q. When was that completed?
A. Some two weeks ago.

Mr. HAGERMAN:

Q. That would be what day?
A. I can give you the exact date. (After consulting memorandum book.) It was completed on the evening of Monday, February 18, 1907.

Mr. LADD:

Q. From the time when that work began, some time in November, were you in Chicago continuously?
A. Yes sir.
Q. Representing Haskins & Sells?
A. I was there during the entire progress of the work.

Mr. HAGERMAN:

Q. Were you the man who had charge of doing the work, or was there some one over you there?
A. The work was done by employees of the Burlington Railway Company.
Q. But on the part of Haskins & Sells?
A. Yes sir.

Mr. LADD:

Q. You were there continuously during that time?
A. Yes sir.
Q. And that was your sole occupation?
A. It was, yes sir.
Q. By whom was the examination of those way-bills actually done?
A. By clerks in the employ of the Chicago, Burlington & Quincy Railway Company.
Q. By whom were they selected, Mr. Sturgis?
A. By Mr. Larmar, Assistant Auditor of freight accounts, who was in charge of the work so far as the Burlington Railway
1950 Company was concerned.
Q. How many Chicago, Burlington & Quincy Railroad Company men were employed on that work?
A. The number varied from two to ten and sometimes for a day at a time as many as thirty men were on the work.

Mr. HAGERMAN:

Q. Were you the only Haskins & Sells man on the work?

A. Yes sir, except for a day or a day and a half.

Mr. HAGERMAN: I don't know that Your Honor understands that there was an agreement between Counsel for the State and Counsel for the Complainant, that Haskins & Sells were to have men in the office of the Chicago, Burlington & Quincy Railroad Company while this work was being done by the employees of the railroad company.

Mr. LADD:

Q. Where was the greater part of that work done, at Chicago?
A. Yes sir.
Q. Some of it was done at Omaha?
A. Yes sir. Some at Omaha and some at Kansas City.
Q. Why was that? Because some of the way-bills were at those places?
A. Some of the way-bills were on file in Omaha and some at Kansas City. That is due to the Burlington Railway Company's system of filing their records.
Q. But the work at Omaha and Kansas City, as I have been informed, was relatively a small part of it: Is that right?
A. Yes sir.
Q. Did you go out to Omaha and also to Kansas City?
A. No sir. I intended to say that Mr. Hudson, one of our employees, did that work out at Omaha and also at Kansas City.

1951 Q. Now what part did you take in the work at Chicago?
A. I supervised the work, overlooked the work of each clerk engaged on it, and saw that he understood what he was doing and that the work was intelligently done along the lines agreed upon. That the business was properly classified, that the entire work of the statement was properly done.
Q. You, or Haskins & Sells, had agreed with the Burlington people as to the method that should be adopted in getting this information: Is that right?
A. Yes sir.
Q. And as to the method of tabulation, too?
A. To a certain extent. The Burlington people, in the summarizing of it, in the final winding up of the figures, suggested methods, which they called "short cuts," and while we did not quite agree with them in that part of the work, it was done in their way to save time.
Q. Did you go over the work with Mr. Hudson and this other man, if there was another man, who was detailed to Omaha and Kansas City, so they were informed as to the methods to be followed?
A. Yes sir, Mr. Hudson came and spent considerable time in the office of the Chicago, Burlington & Quincy Railway Company at Chicago and was informed as to the way the work was being done, before going to Kansas City and Omaha. All that was obtained in Kansas City and Omaha was the abstract of the tonnage and

revenue from the way-bills, and that was sent to Chicago and the results drawn off there.

Q. So the results of both Kansas City and Omaha were sent to Chicago and combined with the work which had been done
1952 in the general offices at Chicago: Is that right?

A. Yes sir.

Q. How was that work or the results of it preserved?

A. The sheets on which the tonnage and revenue were drawn off from the way-bills and which were the basis of the statement, together with the final papers in the summarizing of it, were tied up in packages, the sheets numbered and counted, tied up in packages and sealed and put in the vaults of the Burlington Railway Company.

Q. And they are there now?

A. The understanding was that those seals were not to be broken unless someone was present who was interested in behalf of the State.

Mr. HAGERMAN:

Q. That is, the idea was that nobody except you and the people of the Burlington Railway Company were to have access to those figures?

A. Yes sir, and the Burlington people only when we had representation.

Mr. LADD:

Q. I want to call attention now to an exhibit which I will presently offer in evidence as Exhibit 36——

1953 Mr. LADD:

Q. Were all the way-bills which dealt with freight which touched Missouri on the Chicago, Burlington & Quincy Railway during the month of September 1906, examined?

A. The Burlington people turned over for examination to the clerks assigned to the work, all of the way-bills passing over any portion of their system. At least, the waybills turned over were said to be all the waybills passing over any portion of their system.

Q. All the way-bills on the whole system?

A. Yes sir, regardless of whether they touched Missouri or not. These way-bills were examined and such as touched Missouri or came into Missouri or went from Missouri to outside points, were taken into the statement.

Q. The first column here in this exhibit is the number of tons?

A. Yes sir.

Q. That was taken from the way-bills, was it?

A. Yes sir.

Q. The third column is the revenue: That was taken from the way-bills, was it?

A. Yes sir. The information given in the third column was derived from the billing; that is, the figures in the third column

are not the total of the freight columns on the way-bills taken into the statement.

Q. What is that?

A. The figures in the third column are not the totals, for the reason that some of them were inter-line way-bills, and the freight revenue shown on the face of the way-bills belonged partially to some line or lines other than the Burlington.

1954 Mr. HAGERMAN:

Q. You mean by "interline shipment" one over two lines?

A. Yes sir, and way-billed through.

Mr. LADD:

Q. The third column shows the revenue that the Burlington Company got?

A. In the State of Missouri, yes.

Q. Have you seen Exhibit 19 in the Missouri Pacific case which has been offered in evidence in this case as Exhibit 27, being the result of the operations of the Missouri Pacific Railway Company for the month of October 1905?

A. Yes sir.

Q. Is this Exhibit 36 prepared upon the same lines?

A. Yes sir. Exactly.

Mr. HAGERMAN: Exhibit 27 does not divide into the two classes, the interstate freight.

Mr. LADD:

Q. How many columns are there: Are there the same number of columns?

A. Nine columns across the page.

Q. Substantially the same headings?

A. The same cross-headings.

Q. In what respect does the first column, which deals with the number of tons, differ from the first column of Exhibit 27, which deals with the number of tons on the Missouri Pacific Railway?

A. The interstate business is divided into two classes in this Burlington statement No. 36.

Q. What classes are they?

A. Through interstate, which covers business passing clean through Missouri in transit. That is, having neither origin
1955 nor destination, so far as the Burlington Railroad or its connections are concerned inside the state.

The second class of interstate covers the business originating in Missouri and going outside, and business originating outside and terminating in Missouri; or business going from one Missouri point to another and going out of the State in transit.

Mr. HAGERMAN:

Q. If you had the first eight lines omitted from Exhibit 36, would the rest of it, except the number of the lines, be exactly on the same lines as on Exhibit 27?

A. I don't know.

Mr. HAGERMAN: Is not that right, Mr. Ludlam? If we would start with line nine on Exhibit 36, it would be on the same basis as Exhibit 27?

Mr. LUDLAM: Yes sir.

Mr. HAGERMAN: The difference is the insertion of lines, 1 to 8, dividing between through interstate and second class interstate business?

Mr. LUDLAM: Yes.

Mr. LADD:

Q. Now take column one: I wish you would state what part of the information contained in column one of Exhibit 36 was furnished by the Burlington Railroad Company's employees to you, and checked over by you and found to be right: Take it by lines. I want to separate your work which you did subsequently from the work which you both agreed on.

1956 Mr. LADD: Will Your Honor permit me to show which of these columns are his work?

The MASTER: Yes you may show that.

Mr. LADD:

Q. Take the lines from twenty to twenty-six at the bottom: Are those your work?

A. Yes sir.

Q. Take column two: Whose work is that, yours or yours and the Burlington people?

A. That is my work.

Q. Take columns four and five: Are those your work or your joint work with the Burlington?

A. Those figures were all made by me.

Q. Take columns seven, eight, and nine: Whose work were they?

A. Those figures were all made by me.

Q. Give by lines in column one, your work.

A. Lines 4, 8, 10, 11 & 12; 16, 17, 18, to 26, inclusive.

Mr. HAGERMAN:

Q. Did you mean 10 & 11? That is the one that separates the carload and less than carload?

A. Those totals carload and less than carload are totals of the interstate business. Those figures were made by us. Lines 10 & 11 are totals, lines 2, 6, 3 & 7——

Mr. HAGERMAN: Excuse me, that is right.

Mr. LADD:

Q. Now what is your work, if any, in column three?

A. Lines 4, 8, 10, 11, 12, 16, 17, to 19, inclusive.

Q. In column six, what is your work?

A. Lines 4, 8, 10, 11, 12, 16 to 19, inclusive.

1957 Q. And all the rest is the joint work of yourself and the Burlington employees, is it?

A. All of the rest in columns one——
Q. All the rest except that I have called your attention to?
A. Yes sir.

Mr. HAGERMAN: The sum and substance is, you did the mathematical calculation of this thing and you got the figures in the way you speak of in order to make your calculation?
A. The number of tons, the revenue, and tons one mile, were compiled by the Burlington.
Q. And you made the mathematical calculation?
A. Yes sir.

Mr. LADD: I will here offer in evidence this paper as defendant's Exhibit 36.
Exhibit 36 is in the words and figures following to-wit:

1958 Cross-examination.

By Mr. HAGERMAN:

Q. Did you make any examination of anything except a memorandum that some other clerk had made, from which you got this information as to where the freight comes from that went to make up Exhibit 27?
A. I did not quite understand the last part of your question.
Q. Did you, in getting up your figures as to these stations from which freight was taken, or to which it was taken, as shown in Exhibit 27, have any knowledge upon this at all yourself?
A. Yes sir, general knowledge.
Q. Did you see a single way-bill?
A. No sir.
Q. Did you see a single paper that the railroad Company had, or a book of the Railroad Company, in reference to it?
A. I made use of their official list of stations and agents.
Q. That is a printed list of agencies, that is all?
A. Yes sir.
Q. You got your figures, or made your tabulation, from some figures of some kind that the clerks of Haskins & Sells had made?
A. I got my figures from the working papers from which Exhibit 27 was compiled:
1959 Q. What kind of papers are those?
A. They are working papers, showing the information drawn from the Missouri Pacific Railway Company's own records.
Q. Some of your clerks had made notes in the examination of the way-bills in the Missouri Pacific Railway Company's records, and from those notes you got your figures?
A. From our working papers, from which this Exhibit 27 was compiled.
Q. You mean by "working papers" memoranda they made?
A. Abstracts on which we drew off figures from their way-bills.
Q. When you say "we," you mean some one else did it?
A. I participated in it.
Q. What did you do?

A. I did some of the abstracting from the waybills.

Q. What did you do?

A. I cannot specify the number of way-bills I handled, but I was engaged on the work for some weeks, when it was first started.

Q. I want to ask you a question or two about your Exhibit 36, because I cannot go very far with it, as I have not the information. Have you the total revenue for the year 1905 on the Burlington Road, for the interstate and state business of that year?

A. This statement is Missouri's proportion of the Burlington Railroad Company's revenue for the month of September, 1906.

1960 I know, but have you it in figures for the year?

A. No, sir.

Q. What I would like to know is, what per cent that total of the State business, $118,927.35, in column three, line sixteen, is of the revenue from the state business of the Burlington Railroad, either for 1904 or 1905?

A. These are 1906 figures.

Q. I know that. But for the purposes of comparison I want that.

A. I have not the figures here on the total earnings of the Burlington for either of those years.

Q. Well, can you give me line 12, column 3, the total interstate revenue for the year 1906?

A. That would be practically impossible, without making a separate compilation of figures, because a great many of the Burlington's shipments are carried on the same way-bill, both state and interstate freight. Those way-bills were each accounted for by the railroad, as one total to be collected by the agent or the connecting line.

Q. It would not be possible for you to tell me, from the figures you have in your possession, what percentage this $608,131.30 on line 12, of column 3, of Exhibit 36, is in amount, to the total earnings of any one year of the Burlington Road?

A. I have no figures here from which I could get them.

Q. Turn to your Exhibit 36, and compare it with Exhibit 27; because I cannot do much more than ask you a few questions about it, with the information I have now.

1961 In Exhibit 19, which is the Missouri Pacific statement the average length of haul for State business is 52 miles, all state business?

A. Yes sir.

Q. What is it in the Burlington case?

A. 81 miles.

Q. And the average haul of interstate freight in the State of Missouri is 105 miles. What is it in the case of the Burlington?

A. All interstate freight, 135 miles.

Q. About what per cent is the 52 of the total interstate haul?

A. On the Missouri Pacific Statement?

Q. Yes. In the Missouri Pacific it is practically over twice as much, isn't it?

A. Yes sir.

Q. In the other case, your Exhibit 36, what is it? It is far from twice as much?

A. Yes sir.

Q. How much is it?

A. The state is about 60 per cent of the total interstate haul; and the interstate is about one and two-thirds times the haul of the other.

Q. As against twice as much in the Missouri Pacific case?

A. Yes sir.

Q. The average length of haul for all interstate and state freight on the Missouri Pacific, Exhibit 19, is 92 miles: What is it in the Burlington?

A. 128 miles.

1962 Q. How much more is that? About one-third more, isn't it?

A. Yes sir.

Q. Line 20 of Exhibit 36 is the ratio of revenue per ton per mile on less than carload interstate freight, to less than carload state freight?

A. 48.93 per cent, a difference of 13.41 per cent.

Q. Take your line 22: that corresponds with line 12 in Exhibit 27, doesn't it?

A. Yes sir.

Q. In Exhibit 27 it is 23.78 per cent: what is it in Exhibit 36?

A. 32.43 per cent.

Q. You have made no per cent at all to show what proportion of the year's business in the Burlington revenue these figures would fairly represent, in your Exhibit 36.

A. It would cover the calendar month.

Q. Well, would that be one-tenth, or one-eleventh, or one-twelfth, of the average business? You made no figures at all on that?

A. No sir.

Q. You have no information on that subject?

A. No sir.

Q. Take Exhibit 27 and Exhibit 36, and compare column 8: it looks to me like your decimals are in different places: what does that mean?

A. In Exhibit 27, for instance, all interstate business, the rate on carload interstate average amount received per ton per mile

1963 is shown in cents as .6667 cents, or to be more accurate, 6.667 mills.

Q. How do you show that in the corresponding figure in line 10, column 8, in your Exhibit 36?

A. It is shown as 7 mills and a fraction. It is simply a different way of expressing it.

Q. There you put your decimal two points over?

A. Yes sir.

Q. In Exhibit 36 you express it in mills, whereas in Exhibit 27 it is expressed in fractions of cents?

A. No sir, it is expressed in fractions of cents in both cases, but it is punctuated wrong.

Q. What I wanted to get, because your period does not seem to be in the same place, is that in that respect Exhibit 36 is different from Exhibit 27?

A. Yes sir.

Q. What they have done in Exhibit 27 is to express it in cents, and fractions of cents; and what you have done in Exhibit 36, in the same column, is to express it in fractions of dollars?

A. Yes sir.

NOTE.—It is agreed that the word "dollars" may be written at the head of column 8, in lieu of the word "cents," in Exhibit No. 36.

1964 Redirect examination.

By Mr. LADD:

Q. Mr. Hamilton, in the preparation or examination of the way-bills which are the foundation of Exhibit 36, I want to ask how you and the employees of the Chicago, Burlington & Quincy Railway Company, who made this investigation, treated the live stock coming into or going out of the Kansas City stock yards: was it treated as state or as interstate business?

A. I took the matter up with Mr. Whitcomb, Chief Clerk in charge of the work on behalf of the Burlington Railway, and he ascertained from the Burlington engineering department the location of their loading and unloading chutes at the Kansas City stock-yards; and the business that was unloaded in Kansas was treated as interstate, and the business loaded in Missouri was treated as state business.

Mr. HAGERMAN:

Q. The loading-out place was in Missouri, and the unloading place was in Kansas?

A. That is correct, if my memory serves me.

Mr. LADD:

Q. You and the Burlington people treated that in that way, in the division of interstate and state business?

A. Yes sir.

Q. How is it on business through St. Louis, originating or destined beyond, and crossing the Mississippi River at that point: what was done about the bridge tolls, if any, paid by the Burlington Company, as shown on the original way-bills?

A. The amounts covering bridge tolls, switching charges, and transfer charges, were deducted, and the figures in Exhibit 36 are the net revenues of the company, so far as those charges are concerned.

1965 Q. That was agreed upon between you?

A. Yes sir.

Mr. HAGERMAN:

Q. Did this same man that you mentioned before agree to that with you?

A. Yes sir.

Mr. LADD:

Q. How was it about the $2.00 terminal charge on business into the Union Stock Yards in Chicago?

A. That was also shown on their original way-bills, from which the statement was compiled; that was deducted.

Q. So that, as far as the revenue shown in this statement, on interstate business, crossing the Mississippi River, or going into the Union Stock Yards at Chicago, it is the net revenue after deducting bridge tolls, or the terminal charges at the Union Stock-yards?

A. That is correct.

Q. Have you a book of the Burlington Railway Company which shows all the stations of every kind in Missouri?

A. Yes sir, I have a list of the freight stations, published by the Chicago, Burlington & Quincy Railway Company.

Q. You have that before you?

A. Yes sir. The title page says, "This station list includes the names of all points on the line of the C. B. & Q. Ry. Co. where freight can ordinarily be handled." It is the official list published by their Traffic Department.

Q. How many agency freight stations are there in Missouri?

The MASTER:

Q. You mean a station where they keep an agent constantly?

1966 Mr. LADD: I will have him explain that.

A. There are 170 stations in Missouri where agents are maintained for the transportation of freight business.

Q. How many prepaid stations are there in Missouri?

A. The list shows sixty stations where freight can ordinarily be handled, and where no agent is maintained.

Q. That is, 230 in all?

A. Yes sir, 230 in all.

Q. Explain as briefly as you can what is meant by "a prepaid station"?

A. A prepaid station is a place for the delivery of freight, or the picking up of freight by trains, where there is no agent to handle the business. It is a point the charges on freight destined to which must be prepaid at the shipping point.

Q. How do they manage at such stations, as to freight which is to be shipped from them?

A. It is usually placed on the platform, if there be one, or on the ground, at a designated place, and is picked up by the local freight train crew, or by any freight train crew, and the billing, or the conductor's credentials for handling is made at the next open agency station in the direction in which the freight is moving. That is, he takes the freight and such shipping directions as may be

given him by the shipper, to the agent of the next open station, and from that point the billing is made.

Q. At some of these prepaid stations, there would not be even a building to receive the freight?

1967 A. I should judge that would be the case in a great many instances—yes sir.

Q. You have a memorandum there, "This includes stations on I. & St. L.": what does that mean?

A. The Iowa & St. Louis Railroad is a line running from Sedan, Iowa, to Mercyville, Mo.

Q. That is operated by the Burlington Company?

A. The accounting part of its work is handled by the Burlington.

Q. This statement also includes "Stations on the R. L. & N. Railway?

A. Yes sir.

Q. Is that in the same category as the I. & St. L.?

A. Yes sir. It is a line running from Langdon, Mo., to Rockport, which is operated in the same manner.

Q. Did you make an examination of the way-bills which are involved in this statement in Exhibit 36, being the business of the C. B. & Q. Railway Co. for the month of September, 1906, for the purpose of ascertaining the different kinds of business done at the different stations during that month?

A. No sir, not of the way-bills themselves.

Q. Well?

A. I took the memoranda drawn from the way-bills by the Burlington employes, for the purpose of the preparation of Exhibit 36, and got certain information from it.

Q. According to that, how many stations, if any, during that month, handled interstate freight only?

1968 A. Five.

Q. Were those agency or prepaid stations?

A. All of them were prepaid stations.

Q. How many stations, if there were any, handled state freight only?

A. Four.

Q. What kind of stations were those?

A. All of them were prepaid stations.

Q. How many stations handled both state and interstate freight?

A. 196; 170 of them being agency stations, and 26 prepaid stations.

Q. How many of them, if there were any, handled no freight business at all during that month?

A. Twenty-five stations.

Q. What kind of stations were those?

A. All of them were prepaid stations.

Mr. HAGERMAN: This is all included in this statement which Mr. Ladd has been examining you upon?

A. Yes sir.

Mr. HAGERMAN: I will offer in evidence that paper, as "Complainant's Exhibit No. 41".

Complainant's Exhibit No. 41 is in words and figures following, to-wit:

1969 (At this point, the further hearing of testimony herein is adjourned, subject to be resumed on notice by the Master.)

1970 KANSAS CITY, MO., *April* 16, 1907.

Pursuant to the notice given by the Master the further hearing herein was resumed on Tuesday, April 16, 1907, at Kansas City, Missouri, in the Federal Building:

Present: Honorable F. L. Schofield, Special Master.

Mr. Frank Hagerman and Judge O. M. Spencer appeared in behalf of the Complainants.

Messrs. Herbert S. Hadley and S. B. Ladd, appeared in behalf of the Defendants.

The following proceedings were had:

C. I. STURGIS, recalled, testified in behalf of the Complainants in rebuttal as follows:

Direct examination.

By Mr. HAGERMAN:

Q. Mr. Sturgis, Exhibit 16 produced by the State, purported to give figures and data relative to shipments on the Missouri Pacific R. R. in October 1905, to and from certain points on that road, not including all the Missouri business. Now have you prepared as Exhibit 16-A your comments upon that Exhibit and the result of a comparison of it with Exhibit 27, which purports to give the Missouri Pacific business in Missouri for the entire month of October, 1905: And Exhibit 36, which purports to give the C. B. & Q. Ry. Company's business for September, 1906?

A. I have.

Q. Is that Exhibit 16-A so prepared, correct?

1971 A. I believe it to be correct. It has been made up and examined by me and I believe it to be correct.

Q. Just to give a general notion of the differences, turn to the last page of it and give the difference shown between Exhibit 16, which purports to be for some of the stations on the Missouri Pacific Ry.; and Exhibit 27, which purports to be for the entire month, showing the difference in the revenue tons and ton miles for one month, and upon the same basis for twelve months. Give the sum total of these differences.

A. In the case of the revenue, Exhibits 16, 27 and 36, for the month, reading them in the order named, and in round figures are: $92,000, $36,000——

Q. Never mind that. Give the differences. The difference between Exhibit 16 and Exhibit 27 and Exhibit 36.

A. This does not include Exhibit 36 in the comparison. For one month it shows a difference of $38,363.92 in revenue, which for the twelve months makes $460,367.04.

Q. And in the case of tonnage, what difference does it show?
A. In the case of tons, 37,091 tons for the month, and for the year, 445,092.
Q. And in the case of ton miles, what is the difference?
A. In the case of ton miles, 1,884,655 for the month, and for the year, 22,615,860.

Mr. LADD: What is this difference?

1972 Mr. HAGERMAN: You put in here two sets of figures: One is Exhibit 16, for the Missouri Pacific business for the entire month, but certain selected stations: Then you put in Exhibit 27 (which was Exhibit 19 in the Missouri Pacific case) which purports to be the same business at all the stations in Missouri.

For the purpose of showing their absolute unreliability and inaccuracy, and that you cannot count on them, these exhibits are presented.

Mr. LADD: It is the difference between a partial showing and a complete showing?

Mr. HAGERMAN: Yes. Take the difference between Exhibit 27, in the Missouri Pacific case, which purports to be a complete showing for one month, and Exhibit 36, which purports to be a complete showing on the Burlington road for one month.

A. I haven't it that way .
Q. Take it as showing a comparison between Exhibits 16 and Exhibit 36?
A. In the case of revenue the comparison between the Exhibits 36 and 16, for one month shows $26,453.71: and for the year $317,444.52.

In the case of tons for the month shows 27,484 and in the case of the year 329,808.

Then taking the ton miles, I have for the month 994,510; and for the year 11,934,120.

Mr. HAGERMAN: I offer in evidence Exhibit 16-A.

Complainant's Exhibit 16-A is in the words and figures following to-wit:

1973 Mr. HAGERMAN:

Q. Now defendants' Exhibits 17 and 18 are prepared and based on Exhibit 16: Have you prepared as Exhibit 17-A your comments upon them?
A. Yes sir, I have.
Q. Including in that the doing of their example in the converse way: That is, instead of taking interstate business upon a certain assumption, and assuming the multiple, take the state business and use the multiple as a divisor to ascertain in the same method what would be the result as to the interstate.
A. Yes sir. Exhibits 17 and 18 are made up on an entirely arbitrary basis, and to my mind, prove absolutely nothing.

You can start with sixty per cent, or any other per cent of the interstate carload business, or any other class of freight, and you will

get widely different results. You have just as much right to take one as the other. And the statements, in my judgment, prove nothing.

Q. So when you do it in the way you have illustrated here, it brings out a very different result from what they get, although worked out on exactly the same principle?

A. On exactly the same general principle.

Mr. HAGERMAN: I offer in evidence Exhibit 17-A.

Complainants' Exhibit 17-A is in the words and figures following to-wit:

1974 Mr. HAGERMAN:

Q. Now turn to Exhibit 19, offered by the State, which seems to be offered with a view to making some kind of a distribution as between freight and passenger, and certain portions of the miscellaneous accounts: But does that or not make any distribution as between state and interstate business?

A. It does not make any distribution between state and interstate business, but solely attempts to apportion the miscellaneous earnings to freight and passenger traffic.

Q. Have you prepared, as Complainant's Exhibit 19-A your comments upon and review thereof?

A. Yes sir.

Q. And is that correct?

A. I believe it to be correct.

Q. The final figure in that Exhibit 19, $4,678,346.90, seems to be the figure that the state has made every calculation that was made in this case upon, as representing the operating expenses: That is a fact, isn't it?

A. No sir, I do not understand that is so. But it has been used in all the computations following Exhibit 36; that is, Exhibits 37-38-39-40.

Q. My question should have been that all the figures they make purported to be based on Burlington figures.

A. Those that were based on Burlington figures, they used this amount you mentioned.

Q. Included in that is there anything on account of replacement fund, or has that been arbitrarily deducted, in order to reach that result?

1975 A. This does not include anything covering replacement funds.

Q. And that fund aggregated how much?

A. That fund for the year 1905, as shown by Exhibit 11, aggregated as Missouri's proportion, $917,418.75.

Q. And as divided between freight and passenger, upon the basis of revenue, that would assign how much to the freight?

A. The freight's proportion would be $611,276.11.

Q. Now does this $4,678,346.90, which the State has put in its Exhibit 19, include or exclude taxes and rentals?

A. It does not include taxes or rentals.

Q. And it has taken out of freight some proportion of the miscellaneous and assigned it to passenger, as shown by the Exhibit itself?

A. I do not understand your question.

Q. What I mean is, it has taken and made some division of the miscellaneous earnings as between freight and passenger?

A. But the figure you quoted, this $4,678,346.90, is not earnings but expenses.

Q. Oh, yes, that is right.

Well, now, exclusive of taxes and rentals, what is the total difference as to operating expenses between this $4,678,346.90, and what the operating expenses actually were.

A. The total of the operating expenses, according to my figures, assignable to freight, would be $5,382,909.47.

The MASTER:

Q. It is 66.63 per cent of the total expense of eight million odd hundred thousand dollars?

A. Yes sir.

1976 Mr. HAGERMAN:

Q. And that makes the difference between Exhibit 19 and your figures, how much?

A. $704,562.57.

Mr. HAGERMAN: I will offer in evidence Exhibit 19-A.

Complainants' Exhibit 19-A is in the words and figures following to-wit:

1977 Mr. HAGERMAN:

Q. Now turn to Exhibits 25 and 26: Have you prepared, as Exhibit 25-A, your comments and views as to Exhibits 25 and 26 which have been offered by the State?

A. I have.

Q. And are the statements therein made, correct?

A. The statements made, as Exhibit 25-A, are correct.

Mr. HAGERMAN: I offer in evidence Exhibit 25-A.

The MASTER:

Q. It is self-explanatory?

Mr. HAGERMAN: I might explain, for your information while passing, that Exhibits 25 and 26 undertook to make certain showing as to earnings, assuming that Exhibit 16, which was a partial showing of the Missouri Pacific, was representative of the entire Burlington situation.

Complainants' Exhibit 25-A is in the words and figures following to-wit:

1978 Mr. HAGERMAN:

Q. Now turn to Exhibit 27: Have you prepared as Exhibit 27-A, your review of the State's Exhibit and your comments thereon?

A. Yes sir.
Q. And is this Exhibit 27-A correct?
A. Yes sir, it is.

Mr. HAGERMAN: I will offer in evidence Exhibit 27-a.

Complainant's Exhibit 27-A is in the words and figures following to-wit:

1979 Mr. HAGERMAN:

Q. In the Missouri Pacific case, Mr. Sturgis, Exhibit 19-B was produced, which was the Missouri Pacific Review of Exhibit 19: And that is here reproduced as Exhibit 27-B.
A. Yes sir.
Q. Inasmuch as there are references therein to Exhibit 5-c in the Missouri Pacific case, that is here reproduced as Exhibit 27-c?
A. Yes sir.
Q. So that the Court may get an idea of the comparisons between Exhibit 27 and Exhibit 36, please state the difference.
A. The difference between Exhibit 27 and Exhibit 36 in per cents——
Q. Go down to the last part and give it in revenue tons and ton miles.
A. On the bottom of the third sheet; the difference in revenue for one month is $11,910.21; for the twelve months, $142,922.52.
In the case of the tons, the difference for one month is 64,575; for the year 774,900.
In the case of the ton miles, the difference for the month is 890,145; for the year, 10,681,740.
Q. Now, as a matter of fact, comparing Exhibit 27-c with Exhibit 1, what is the total difference for the year in revenue for state freight, between the Missouri Pacific and the Burlington road?
A. It is recited in this Exhibit that the total state freight earnings for 1905 for the Burlington, as shown by Exhibit 1, were
1980 $1,649,665.73; and for the Missouri Pacific, $1,632,856.14; making a total difference for one year of $16,809.59, or for one month, $1,400.90.
Q. That is to say, upon the yearly showing there is a difference of $1400 a month as against practically $12,000 for the year, when you compare Exhibit 27-36?
A. Yes, sir, $1400 is the monthly difference.

Mr. HAGERMAN: I will offer in evidence Exhibits 27-A, 27-b, 27-c.

1981 Complainant's Exhibit 27-a is in the words and figures following, to-wit:

1982 Complainant's Exhibit 27-b is in the words and figures following, to-wit.

1983 Complainant's Exhibit 27-c is in the words and figures following, to-wit:

1984 Mr. HAGERMAN:

Q. Have you prepared, as Exhibit 28-A your comments upon and review of the State's Exhibit 28?

A. Yes sir.
Q. And are they correct?
A. I think and believe them to be correct.

Mr. HAGERMAN: I will offer in evidence Exhibit 28-A.

Complainants' Exhibit 28-A is in the words and figures following, to-wit:

1985 Mr. HAGERMAN:

Q. Hev- you prepared as Exhibit 36-A your comments upon and review of the State's Exhibit 36?
A. Yes sir.
Q. Is your Exhibit 36-A correct?
A. Yes sir. I believe it to be.
Q. In Exhibit 36, the State's Expert in making his compilation, included as State freight live-stock out of Kansas City, but excluded, as I understood him to say, from State freight the live-stock into Kansas City?
A. Yes sir.
Q. Now this, according to his statement, seems to be an arbitrary division based upon a statement that the loading was generally done on the track in Kansas, and the unloading on the track in Missouri: Have you prepared——

General HADLEY: The statement was prepared as a matter of agreement between the experts and some prepresentative of the Burlington road.

Mr. HAGERMAN: That is the way they got up the figures but they did not agree that that was the correct way. Your experts had a right to call for any figures you wanted and you could compile them as you pleased.

General HADLEY: The only point I seek to mention in passing is that Mr. Hamilton's statement was an arbitrary method of dividing that business:

Mt recollection is that Mr. Hamilton testified that was done by agreement with or at the suggestion of the representative of the Burlington road.

1986 Mr. HAGERMAN: There is no difficulty about the figures, but the use the State makes of them. What the State claims it can do, it seems to do differently in the Missouri Pacific case. In that case it treated all live-stock business as interstate; and this case it treats half of it as interstate and half as State, on the theory that the loading is done in one State and the unloading in the other State.

The MASTER: You say that is their theory, and you are entitled to your theory.

Mr. HAGERMAN: Yes, and I want to examine Mr. Sturgis about that. He is the only one who had authority to make any agreement.

A. In making up these figures, advice was received, as recited in this Exhibit now before us in paragraph "c" that the loading was generally done on the track in Missouri and the unloading was generally done on the track in Kansas. The two tracks being side by side and the State line running between them.

There was absolutely no agreement by anybody connected with the Burlington road to the effect that the Burlington would accept figures based on that information.

In the testimony previously offered and which I have read, I understood it to have been stated that an agreement was made with a Mr. Whitcomb, who is chief clerk in the office of the Auditor of Freight accounts. He not only did not enter into an agreement, but would not and could not have any authority to do so.

Q. What was your arrangement with Haskins & Sells about
1987 allowing this work to be done?

A. My arrangement with Haskins & Sells was, that the figures should be made up with accordance with the wishes of General Hadley, and that if the expert who following the making up of the figures had any question to raise about the way they were to be made up, he was to take it up with Mr. Lamar or myself.

Q. Who is Mr. Larmar?

A. Mr. Lamar is the Ass't Auditor of freight accounts, and the man who has direct charge of the clerical work in the office in which the figures were made up.

Q. The point I am getting to is, that they never took up any such question with you?

A. No question of the kind was taken up with either Mr. Lamar or myself.

General HADLEY: I object to the testimony about Mr. Lamar as hearsay testimony.

Mr. HAGERMAN: Mr. Sturgis is there in the office and would know about it.

A. Mr. Lamar is in my employ as well as Mr. Whitcom.

The MASTER: I think the connection and relation between the parties is such as to enable Mr. Sturgis to say, if he undertakes to say, that it was taken up with one of his subordinates.

I will over-rule the objection.

Mr. HAGERMAN:

Q. Mr. Sturgis, turn to paragraph "e" of this Exhibit: Applying the figures as shown by Exhibit 36 for the year, and com-
1988 paring it with your Exhibit, which represents a year's business, what is the difference?

A. By applying the figures in Exhibit 36 to the income received in 1905, as shown by Exhibit 1, we find that the difference between the two statements, using one-twelfth of Exhibit 1's figures to compare with such figures as are shown by Exhibit 36, to have been 13,478 tons. That is, 99,936 tons against 86,458 tons.

Mr. LADD:

Q. Are those figures here?

A. Yes sir, in paragraph "f." I make the subtractions there.

Mr. HAGERMAN:

Q. Proceed, Mr. Sturgis.

A. As to the ton miles we have 8,071,403 against 6,982,761.

Q. Turn back to subdivision "e" on page before, and what is the difference in dollars and cents in the earnings?

The MASTER: The difference between Exhibit 36 when multiplied by twelve and Exhibit 1?

Mr. HAGERMAN: Yes.

A. The difference in interstate freight earnings is $562,120.89.

Q. That is to say, the interstate earnings were increased that much?

A. Yes sir, increased by Exhibit 36 over Exhibit 1.

In the case of the State earnings, they were decreased $222,537.53.

Taking both kinds together, both interstate and state, results in a difference showing an increase of $339,583.36.

1989 The MASTER:

Q. An increase over Exhibit 1?

A. Yes sir, an increase over Exhibit 1.

Mr. HAGERMAN: I will offer in evidence Exhibit 36-a.

Complainants' Exhibit 36-a is in the words and figures following, to-wit:

1990 Mr. HAGERMAN:

Q. Have you prepared blue-prints showing how the switch tracks of the Burlington road run into and reach the stockyards at Kansas City, and also a blueprint of the yard itself showing how the State Line divides?

A. I have not had prepared a blue print of the yards themselves, but I have obtained a blueprint which I understand came from the stockyards company.

Q. As representing their yards?

A. Yes sir. And I have compared it or part of it, in a general way, with our own Company's blueprints and it is practically the same.

In addition I have had prepared and attached to this Exhibit 36-a, a sketch not drawn to scale, but drawn so as to more readily show the distance of the tracks from the State Line. Now then, there is on- track that crosses the State Line and gets into Kansas and after crossing Kansas Ave., branches off into two forks, one called track 8 and one called track 9:

Q. What does the 74.2 ft. represent here? The distance from the State Line to the farthest point?

A. The distance from the State Line to the farthest point.

Q. That is to say, the farthest point that the track extends over into the State of Kansas is 74.2 ft. over the State Line?

A. Yes sir, from the center of the track.

Q. What is the length of the track? There is "831" and "984": What does that mean?

A. That 831 would show, according to this sketch, that

1991 that point was 831 feet south of the south line of Kansas Ave.

Q. That is the point where the track enters?

A. No sir, that is not the point where the track enters the State. That figure 831 feet would not have any bearing in this case.

Q. I didn't know what that meant.

The State line, then, runs right between tracks No. 8 and 9: What is the distance of track 8 over in Kansas from the State Line?

A. The center of track 8 is 7.9 feet on the Kansas side of the State Line.

Q. And track No. 9 is how far on the Missouri side?

A. 4.2 feet.

Q. Will you produce the map of which you spoke, showing the stock-yards plan?

A. Here it is. (Producing blueprint.)

The MASTER: As I understand this Exhibit 36-b, all the cattle handled into and out of the stock-yards at Kansas City, on the Burlington Railroad, goes on both sides of the State Line?

Mr. HAGERMAN: As a switching proposition.

Mr. HAGERMAN: I offer in evidence this map blue-print as Exhibit 36-b.

Complainant's Exhibit 36-b is in the words and figures following, to-wit:

1992 Mr. HAGERMAN:

Q. Have you prepared, as Exhibit 37-a your review of and comments upon Exhibits 37-38-39-40?

A. I have.

Q. Is it correct?

A. I so believe.

The MASTER:

Q. Those Exhibits were all of them based upon Exhibit 36?

Mr. HAGERMAN: I think so.

Mr. HAGERMAN: I offer in evidence Exhibit 37-a.

Complainants' exhibit 37-a is in the words and figures following, to-wit:

1993 Mr. HAGERMAN:

Q. Have you also prepared in that connection, as Exhibit 37-b, additional review and comment upon the same Exhibits?

A. I have.

Q. And is it correct?

A. It is correct.

Mr. HAGERMAN: I will offer in evidence Exhibit 37-b.

Complainants' Exhibit 37-b is in the words and figures following, to-wit:

1994 Mr. HAGERMAN:

Q. I observe that Exhibits 37-38-39-40 are statements by the State's experts, where after purporting to allow for the increased cost of doing the State business, as they say it ought to be, the total amount of expenses that are chargeable, the smallest amount in

their Exhibits seeming to be $709,705.22, and running from that up to $788,352.07.

What per cent do those figures represent, of all the earnings?

A. Of all the earnings, 8 per cent and 9 per cent, respectively.

Q. Of all state freight?

A. 43 per cent and 48 per cent, respectively.

Q. That is to say, to earn that amount of money it took that per cent of the same for the operating expenses?

A. That is, as it is shown by the State Exhibits 37-38-39-40. We do not admit the correctness of it.

Q. Their figures in other Exhibits, notably Exhibit 19, show a higher per cent. But what I want to call the attention of the Master to is that the total amount of operating expenses, 8 per cent and 9 per cent, as against the division upon a revenue basis of 13.10 per cent. That is, after the State has allowed for what they claim is the increased cost, and 43 per cent and 48 per cent of the State freight earnings.

Q. Have you prepared as Exhibit 41 some of the reasons why in your judgment, as well as figures, the division as between state and interstate freight ought to be upon a revenue basis?

1995 A. The division of expenses?

Q. Yes.

A. Yes sir, and I have set them forth in Exhibit 41.

Q. I notice you have attached thereto a paper we will call Exhibit 41-a. That is the case as Exhibit 55 in the Missouri Pacific case?

Mr. LADD: I would like to make an objection here. The reasons contained in the eighth page——

Mr. HAGERMAN: That is Exhibit 55 in the Missouri Pacific case.

Mr. LADD: Down toward the bottom of that page there is reference to the testimony of Mr. Ludlam, referring to a page in the Missouri Pacific case, and also on the next page. Mr. Ludlam's testimony in that case is not in evidence here.

Mr. HAGERMAN: It will be if we can get it in.

Mr. LADD: You will have to get it in first.

I object to Mr. Ludlam's testimony in this case as shown in Exhibit 41-a. It is not in this case.

Judge SPENCER: Mr. Ludlam testified to it.

Mr. LADD: The reference is to the Missouri Pacific case.

General HADLEY: It is not in evidence in this case.

Judge SPENCER: Your point is, that this witness cannot comment on testimony given by Mr. Ludlam, after he has read it and it is evidence in the case?

General HADLEY: It is not evidence in this case.

Mr. HAGERMAN: We propose to offer Mr. Ludlam's testimony in that regard. I propose to offer at each one of these refer-

1996 ences just what Mr. Ludlam testified to it.

Mr. LADD: We propose to object to it.

The MASTER: The only danger of admitting this class of testimony would be its tendency to confuse, and that as a matter of

course would apply to any of the testimony in one of the cases introduced in evidence in the other case. My thought at the beginning was that I should exclude the testimony in all the cases from the testimony in any one case, except that which was offered in any one case. But much of that sort of testimony has gone in without objections, and that which I permitted to go in without objection was because the precedent seemed to have been established at earlier stages of the case, without objection.

Now, as to how far conclusions may be drawn in one case by comparisons with certain data taken from the records on another railroad company, is of course for the trier of the fact to determine.

I can very readily see how it might be that under certain similar circumstances, in the absence of direct proof, in one case the data might be taken from another railroad company and introduced as persuasive evidence, when supplemented by testimony that the surroundings and conditions were in a measure similar.

Now that has been the practice throughout all these cases, and while I am inclined to think that possibly as much harm as good may result from that, and certainly it imposes a very considerable additional burden upon the trier of the facts to separate
1997 these various matters, when I come to apply them to the particular case under investigation, yet as that has been the rule under which the testimony has been admitted, I think it is too late to escape from it now.

Of course so far as the present trier of the fact is concerned, I should make very strenuous efforts to avoid confusion.

Mr. HAGERMAN: I want to offer only those portions which refer to the Exhibits specifically.

The MASTER: I have insisted all the time that such evidence taken in one case as was desired to be used in another case, should be included in the record in the case in which it is offered.

Mr. LADD: You did that, and required Mr. Minnis to point out some testimony he intended to offer, when we had already agreed that he might offer it. The agreement was the foundation of it all.

The MASTER: Even before we commenced the trial of the Wabash case, and were in the earlier stages of the Burlington case, a large mass of that kind of testimony was offered.

Mr. LADD: What kind of testimony?

The MASTER: The State introduced the examination of certain months of the Missouri Pacific Company.

Mr. LADD: But this is another question. The question is here, whether the testimony taken in another case may be offered in this case. Not where the testimony regarding the operations of one road may be offered in litigation to which another road is a
1998 party. But whether testimony already adduced in another case may be transported and put into this case. That is what we object to.

The MASTER: Very much of the testimony in this case, and in all cases where there is a great volume of what might be called expert testimony, is argumentative in its character. And especially where it involves mathematics, as it does in this case and in similar

cases, and conclusions to be drawn from the witnesses' percentages and calculations, many of them very exceedingly intricate.

Now if in the Missouri Pacific case the complainants challenged certain conclusions that are drawn by the State's experts, from data offered in evidence in that case, in view of very much of the testimony introduced in this case, taken from Missouri Pacific record of the evidence, I can see no objection to its going in, except that it is confusing, as I said before. It is likely to be confusing, but I can see no other objection.

Mr. LADD: We don't object to Mr. Sturgis giving his opinion. We would be very foolish to do that. He has a right to give his opinion, but we do object to importing testimony of another witness in another case, and putting it into this case, and that is what is attempted to be done by this exhibit 47-a.

The MASTER: It has not been up to the present time, except by agreement; and that was simply to facilitate the taking of the testimony in the case as was the agreement made between the State and Mr. Minnis. That is to say, instead of requiring the witness to be cross-examined, upon an exhibit that was offered in evidence
1999 in the Wabash case, which had reference to Missouri Pacific business, it was agreed between Counsel that instead of requiring Mr. Minnis to cross-examine him upon that exhibit, the cross-examination made by the Missouri Pacific people might be incorporated into the record in the Wabash case as the witness' cross-examination in that case. Of course that could be done, or at least it has been done, only by an agreement of that sort.

Mr. LADD: We agreed to that and we also, agreed that Mr. Hagerman might introduce into the Missouri Pacific case a large volume of opinion testimony taken at Chicago in the Burlington case.

The MASTER: As I say, up to the present time, testimony taken in one case and offered in another case, has been admitted only by agreement between Counsel.

General HADLEY: This seems to be an aggrevation of the confusion that might arise from such a practi-e.

What is sought to be done by this observation that Mr. Sturgis adopts, is to comment upon his constructions of the testimony that Mr. Ludlam gave in the Missouri Pacific case. Manifestly, if that testimony was in this case, a different question would be presented by the offer of Mr. Ludlam's testimony. And manifestly, it seems to me, that Mr. Sturgis' comments upon what Mr. Ludlam testified to in the Missouri Pacific case would be irrelevant and immaterial until we had Mr. Ludlam's testimony in this case. And the
2000 preliminary question is, whether Mr. Ludlam's testimony should go in.

The MASTER: In other words, it can at most go to the challenging of this particular exhibit, because it is founded upon testimony which is not in this case.

General HADLEY: It would bring about exactly the point that your Honor had sought to avoid. Mr. Sturgis comes here and says that Mr. Ludlam testified to certain apportionments and divisions

in the Missouri Pacific case, and consequently his ton mile theory is not correct in the Burlington case.

We say he did not so testify. How can you determine from the record in this case whether he did or not so testify? You must then refer to testimony outside of this case to determine the weight or lack of weight of Mr. Sturgis' comment upon Mr. Ludlam's testimony.

Judge SPENCER: What objection have you to Mr. Ludlam's testimony being before the Court?

General HADLEY: His comment upon testimony not before the Court. Exhibit 41-b is now offered in evidence and is objected to.

The MASTER: I will admit the Exhibit.

Mr. HAGERMAN: I want to say to your Honor that before I went to Washington I put it in writing so there would be no mistake about it, and sent the letter to counsel for the State, asking them to produce Mr. Ludlam for cross-examination, or if they would waive objection, I would offer this testimony in evidence.

2001 The MASTER: What are you offering?

Mr. HAGERMAN: I am offering first the Exhibit, and then I will follow that by offering extracts from Mr. Ludlam's testimony which refers to the exhibit.

The MASTER: The testimony of Mr. Ludlam in the Missouri Pacific case?

Mr. HAGERMAN: Yes, that refers to this Exhibit 41-a.

The MASTER: In the absence of evidence in this case, what bearing can it have upon the issues in this case?

Mr. HAGERMAN: Mr. Ludlam has expressed his opinion upon the ton mile basis. I have a right to cross-examine him upon that question. They cannot refuse to produce him for further cross-examination, after they put in that Exhibit, and then say I cannot use his testimony taken in another case.

But, independent of all that: If there are several cases, one party on one side being the same, and testimony that is generally applicable to all the cases, the parties have full right to examine and cross-examine upon that subject, you are entitled to have that testimony the same as if it were taken in this case.

In my judgment, there is not an item in one case that cannot be introduced in all the cases.

This has a bearing upon Mr. Ludlam's expression that the ton mile is a basis upon which to divide it. He recognized at the outset, and said that the expenses must be divided on another basis. If nothing more, it would be perfectly good for the expert to point out where the other thing leads you to.

2002 The MASTER: The truth is, that the whole Exhibit is purely argumentative. There is no proof in the Exhibit, except the proof that we get by processes of reason and logic.

But I don't agree with you at all as to the admissibility in one of the cases of the record evidence taken in all of the others. I do not subscribe to that proposition at all.

As a matter of course, you have a right to cross-examine Mr. Ludlam——

Mr. LADD: I do not want to interrupt the Court, but I do not want our attitude about Mr. Ludlam to be misunderstood. I would like to explain that to your Honor.

Last Wednesday or Thursday morning, I found on my table a letter——

Mr. HAGERMAN: It was written on Monday, the day I left the city.

Mr. LADD: I found it on my table. It said that Mr. Hagerman would either require us to bring Mr. Ludlam here for cross-examination in the Burlington case, or he would offer certain testimony which Mr. Ludlam had given in the Missouri Pacific case. Of course, Mr. Hagerman would not expect me—I would not expect him, to take either horn of the dilemma because he offered it to me or I to him. I do not think we were bound to do that. I wrote Mr. Hagerman a letter but I don't suppose he got it—I didn't know he was not in the city. I said that Mr. Ludlam had been cross-examined twice in this case; that he was in New York; that
2003 we could not bring him on and we would not consent to his testimony taken in the Missouri Pacific case to be used in this case and should not bring him on unless directed to do so by the Master.

It is a great hardship to Mr. Ludlam to come on here, but if your Honor directs him to come, we will have him do —. But we did not think we were obliged to accept one or the other of the alternatives, offered us by Mr. Hagerman—and he would not think so. If your Honor chooses we will have Mr. Ludlam come here: but he cannot come here within three or four days. He supposed and I supposed that he was through.

The MASTER: The whole matter seems to me in the end to be just about this:

It has reference to this Exhibit 41 which is now introduced and which is an epitome of the argument by experts of the position taken by himself and the expert on the other side. And a criticism in other words, of the various positions taken by the State Experts, and it refers to certain evidence, not in this case bu- in another case.

Now suppose instead of this coming before the Master in the shape of an Exhibit, it were an oral argument, why of course there would be no objection to it; there could be none. It might be argued by Complainants' Counsel that he might argue that Mr. Ludlam's position in respect to the Burlington case would be precisely as it had been under oath in the Missouri Pacific case, and acting upon that assumption, he would draw his own conclusion and comment upon them.

Now what more is this Exhibit than that, at last, when
2004 you come to figure on it?

Mr. LADD: That we state that that statement there as to Mr. Ludlam's position does not fairly represent Mr. Ludlam's testimony.

The MASTER: If it does not, it would be an unfair argument.

Judge SPENCER: What we are trying to do is to introduce these statements and let the Court see whether they are fair.

The MASTER: I don't think the testimony given by Mr. Ludlam in the Missouri Pacific case can be introduced and received in evidence in this case, and I sought to sustain the objection. If you are now offering that part of his testimony. The best evidence is Mr. Ludlam, in this case.

Now, if you want to cross-examine Mr. Ludlam and put his evidence in on the same subject in this case, it is perfectly proper and fair to you, that you should have opportunity to do so, and I shall require that he be reproduced for that purpose.

But as far as this Exhibit is concerned, I will over-rule the objection and allow the Exhibit to go in.

General HADLEY: But your Honor, doesn't that put us in a position, in order to prevent confusion arising and an unfair argument being made to the trier of the fact, either yourself or another Court, to introduce Mr. Ludlam's testimony to show that he did not say in Exhibit 41 what it is said he did?

Mr. Ludlam testified in the Missouri Pacific case that certain expenses should be divided on a tonnage basis, and we say he
2005 did not. You have Mr. Sturgis placing a construction upon the testimony in another case, where we say the witness did not so state. Now our only defense is to ask that the record be introduced. There you get the confusion.

Mr. LADD: Mr. Sturgis proposes to testify to this statement. This goes in as a sworn statement by Mr. Sturgis: This says "The State expert says that it should be upon a ton as distinguished from a ton mile basis." Now he swears that Mr. Ludlam testified to that. We dispute it. How are we going to dispute it. It is here in evidence, and so far as this testimony goes it is uncontradicted. Mr. Ludlam is one of our experts. Must we let it go in without contradicting it, and showing to the contrary? What position does that put us in?

General HADLEY: Our contention is, that if Mr. Hagerman offers comment upon Mr. Ludlam's testimony, the whole proposition should be determined as a whole proposition. Mr. Sturgis should not be allowed to incorporate Mr. Ludlam's testimony, by reference to certain pages, and saying he so testified. This is Mr. Sturgis' conclusion, based upon his understanding of certain testimony, which may simply single out one answer.

The MASTER: Suppose, Mr. Ladd, instead of that statement occur-ing in an Exhibit like this, it occurred in an oral argument at the Bar. It certainly could not be construed into an admis-
sion.

2006 Mr. LADD: If it occurred in oral argument, wouldn't I be permitted to turn to the testimony and say that the witness did not make those statements?

General HADLEY: May I ask how Mr. Hagerman could refer to something that Mr. Ludlam testified to in the Missouri Pacific case, in this case? That is what we object to.

The MASTER: I think it is all right as far as the Exhibit is concerned. The only danger is the confusing character of it.

I am not criticising the practice in a case of this sort of introducing

an Exhibit of this kind. I think it might be very helpful in a case of this kind, without waiting for the argument. As I remarked to Mr. Minnis, when the same question came up in the Wabash case, it would be just as helpful in a brief as to be offered in evidence.

Mr. LADD: It does seem to me if this Exhibit is admitted, and this statement, at least we ought to be permitted to introduce other portions of Mr. Ludlam's testimony, other portions that specifically refer to the same subject.

Mr. HAGERMAN: Certainly. No one would object to that. I will agree with you now to pick out all there is in his testimony upon that subject.

The MASTER: You could against that Exhibit file another Exhibit and quote as much of Mr. Ludlam's testimony as you choose to, taken in the Missouri Pacific case.

Mr. LADD: Then why shouldn't we put it in by reference to the pages. I would rather have Mr. Ludlam here. We should
2007 not be left remediless.

The MASTER: I think it is all right to admit this as an Exhibit but I don't believe it is proper to introduce in evidence in this case testimony given by a witness in another case when the witness can be reached to testify and give evidence in this case.

Mr. LADD: Very well, we will bring Mr. Ludlam here.

Mr. HAGERMAN: Then the understanding is that Mr. Ludlam is to be brought here for further cross-examination? There were no Exhibits upon which Mr. Ludlam could be examined—cross examined at the time he was here, and that is why I wrote the letter and let Mr. Ladd know that we would want to either have Mr. Ludlam here or we would introduce these parts of his testimony.

The MASTER: You could come in here at the close of the Burlington case and say "We offer in evidence all this testimony taken in the case of the Wabash Railroad Company against Herbert Hadley and others, and dump that whole record into this case?

Mr. LADD: How will it do to have Mr. Hagerman designate the particular parts, by pages, of the testimony to which he intends to refer in this case? And then give us on our side the privilege of designating other parts of Mr. Ludlam's testimony which supplements and make it complete on that subject?

The MASTER: And then let both go in by agreement, in order to avoid the necessity of bringing Mr. Ludlam back here for
2008 further cross-examination?

If you gentlemen can agree to that, it may be so done.

Mr. HAGERMAN: I offer in evidence Exhibits 41 and 41-a and will designate the particular pages of the testimony of Mr. Ludlam given in the Missouri Pacific case, which I offer in evidence as his testimony in this case.

Beginning with the last question on page 1274 including answer to the first question on page 1276, reading "Yes I think that would be a fair way".

Last question on page 1279 including answer to that question on the top of the next page 1280.

On page 1281, next to the last question including the second answer on page 1282.

Beginning with the question about the middle of the page 1153, "How would you figure, etc", and ending with the last answer on page 1156.

Page 1355, beginning with the first question on that page and ending with the next to last answer on the same page.

Page 1358 beginning with the fourth question and ending with the first answer on 1360.

Beginning with the third question on page 1428 and running to the last answer on 1430.

2009 Mr. HAGERMAN:

Q. Mr. Sturgis, have you prepared and is it correct, Exhibit 42, entitled "Complainants' final Exhibit"?

A. Yes sir.

Q. That shows that before you come to any allowance for the extra cost of doing State business a net earning there of $14,046.80, does it?

A. Yes sir.

Q. And that has been figured upon the basis of revenue and applying it to taxes and rentals?

A. That is correct.

Q. And figuring nothing for the value of the property independent thereof?

A. That is correct.

Q. The last paragraph of that Exhibit deals with expenses as affected by the charge on account of thr Kansas City bridge, which Mr. Fisher says the total of $550,000 should not be charged to Missouri.

There is $550,000 that went into Missouri expenses which Mr. Fisher criticised.

Now assuming that that was to come out, how much of your final Exhibit in dollars and cents would be affected? What per cent of revenue in other words, have you calculated. How much of it on your theory and figures was assignable to local or State freight?

A. $72,105.

Q. So that would represent the difference between the State
2010 and ourselves upon that proposition or that amount?

A. Yes sir.

Q. That is as far as it would affect the results of your figures, that $72,105?

A. Yes sir.

Q. That seems to be part of what was called the "replacement account", and I don't care to go to any very great extent into that subject, which has been gone over before; but there was in that same account $367,418.75 which represents the "replacement account for equipment" which the State's expert says was all right and correct.

Now taking the valuation of the State Equalization Board upon the basis of the multiple of three, what per cent of that valuation of equipment would that sum represent, that $367,000 which the State's Expert concedes to be correct?

There has been a compilation made here from the State Board of

Equalization figures, taking their assessment for equipment and their assessment for way and structures (this bridge coming in under the latter) and I want to get the respective per cents of that as applied to the whole property.

A. Taking the compilation on the equipment as shown by the assessment and the multiple of three, we find that this replacement fund on account of equipment of $367,418.75 was 5.29 per cent.

Q. Applying the same thing and confining it to percentage as applied to way and structures, following in the same way, what would be the result?

A. By the same computation we find that the replacement for way and structures, that is the $550,000 on account of the Kansas
2011 City bridge, was two per cent of three times the assessed valuation of the way and structures.

Q. In other words, less than one-half in percentage?

A. Less than one half in per cent of what the replacement fund on equipment was.

Mr. HAGERMAN: I offer in evidence Exhibits 42 and 42-a.

Complainants' Exhibit 42 is in the words and figures following, to-wit:

2012 Complainants' Exhibit 42-*a* is in the words and figures following, to-wit:

2013 The MASTER: I order that the blue-print marked Exhibit 36-b in this case, be filed in the Missouri Pacific case.

2014 Cross-examination.

By H. S. HADLEY:

Q. The last two pages of this last Exhibit 42 are introduced for the purpose of an argument from your standpoint, that the amount set aside for the replacement of the bridge is fair as compared with the amount which Mr. Fisher stated would be correct, which was set aside for replacement of equipment: Isn't that the purpose?

A. The Exhibit simply shows the fact.

Q. I know. But it is to illustrate that point.

A. I should not want to say it is to illustrate that point.

Q. What is it to illustrate?

A. The relationship of the two.

Q. I suppose your contention is that you have not set aside an unfair proportion, nor divided it in an unfair way, by reason of the fact that it would produce a less per cent than the amount set aside for replacement?

A. That is the conclusion I would personally draw from it, yes.

Q. How was that amount of the rolling stock assessed in the State of Missouri according to the assessment of the State Board of Equalization in 1906 determined?

A. The figures were taken from the regular publication of the State Board of Equalization.

Mr. HAGERMAN: The book called the "Journal of the State Board of Equalization?"

2015 A. Yes sir .

Mr. HADLEY:

Q. Do you know how that rolling stock was apportioned in Missouri?

A. No sir, I cannot tell you now.

Q. It was not an actual apportionment?

A. Under the regular rules of the State, whatever they are.

Q. Are you familiar with what they are?

A. No sir, I do not recall them.

Q. Are you familiar with how the road-bed and superstructure was determined?

A. The figures therein were determined, as I understand it, by the State Board of Equalization.

Q. But you do not know the basis of determination?

A. I do not know what basis they used.

Q. Of course you acted upon the theory that insofar as the road bed and superstructure was concerned, the actual property was taken: but you make no report for the actual rolling stock in Missouri to the State Board, do you?

A. I do not make the report for taxation in Missouri at all.

Q. You do not know whether the rolling stock assessed to the State of Missouri is simply an apportionment or an estimate, or is based upon your own statement?

A. I do not. I don't know just what they did. I don't know at all what guided the State Board in arriving at their opinion.

Q. So you don't know what method of dividing and as-
2016 signing to the State of Missouri rolling stock, whether it is the same method for apportioning and assigning to Missouri its proportion of the roadbed and superstructure.

A. No sir. I do not have anything to do with that.

Q. What is your idea as to the correct method of determining what should be charged?

Objected to by Counsel for Complainant as immaterial.
Objection over-ruled.

A. I do not know without going into it as a study. I have had a good deal of correspondence, at one time, with the authorities in Wisconsin on that question. I know they did not adopt my theory. I worked a long time at it. As I do not have charge of taxation matters, I have not kept my mind informed on the different practices, and I cannot recall now just what the arguments were.

Q. The point I want to particularly get at is this: When it comes to the question of the roadbed and superstructure you set aside a certain amount for replacement. That can be ascertained and assigned definitely to Missouri, because the part of the roadbed and superstructure in Missouri is determined on geographical lines: That is correct?

A. Yes sir.

Q. But when it comes to assigning a portion of the amount set aside for the replacement of equipment, how do you determine in your own mind, for the purpose of your figures, the amount of equipment that should be assigned to Missouri.

A. In the case of freight car equipment, it is the freight car mileage.

2017 Q. You do not divide it upon the basis of the proportion of mileage in Missouri to the proportion of mileage in the entire system?

A. No sir. It is on the basis of the freight car mileage, the mileage made by the freight cars in Missouri, as compared with the mileage by the freight cars on the system.

Q. Was your assignment of $367,418.75, assigned as the proportion of the replacement for equipment which should be charged to the State of Missouri, on the basis of freight car mileage?

A. So far as it applies to freight cars, yes sir.

Q. How about engines and passenger cars: I suppose freight cars include, flat cars and box cars?

A. Oh, yes.

Q. That would get in all the equipment, locomotives and cars?

A. That I quoted included freight cars.

Q. But with the two additions, flat cars and locomotives, that would include all your equipment?

A. Exhibit 11 shows that of this $367,418.75 on account of equipment, $255,000 was on account of freight cars; $91,500 on account of locomotives; none on passenger cars; and $20918.75 shop tools.

The shop tools would be on the basis of location, as I recall it.

Q. That is, actual.

A. Yes sir.

2018 Q. How are the other items apportioned?

A. The freight cars as I have recited.

Q. Locomotives, how?

A. It is given right here (indicating Exhibit.) These same as freight cars, that is, on a corresponding basis, the locomotive mileage in Missouri to the total locomotive mileage. By total locomotive mileage is meant the mileage for the system. In other words, they follow the same basis.

Q. How does that compare with the mileage?

A. That I cannot tell you.

The MASTER:

Q. You mean track mileage?

General HADLEY: Yes.

Q. Assume that you had apportioned expenses of equipment to Missouri on a track mileage basis instead of a car or operating mileage basis?

A. Without the figures, I cannot do any more than express my judgment on it, and that is, that under the basis of freight car mileage and locomotive mileage, Missouri would come out the same as on the track mileage, or perhaps a little larger proportion for Missouri.

Q. On what do you base that judgment?

A. It depends entirely on how Missouri stands in its freight car and locomotive mileage as compared with the rest of the system as

a whole. It is a matter very easily determined by the figures, if I had them here, but I haven't them here.

Q. Isn't it a fact that the figures already in this case show that your earnings per mile upon state and interstate business, are about twice as much in Missouri as your earnings per
2019 mile upon the entire system? That by assigning these expenses of replacement to Missouri upon a car mileage basis, you are assigning an abnormal proportion to this State?

A. Not necessarily so, but probably so. You cannot tell about the difference in loading.

Q. Then, if the State Board of Equalization apportions the equipment to Missouri upon a road mileage basis, and you are apportioning expenses of replacement of equipment, upon a car mileage basis, then you are taking a percentage of the entire valuation here, which bears no relation to each other, aren't you? That is, the values are determined upon one basis and the expense of replacement upon another basis?

A. If the facts are as stated by you, as to the manner in which the State Board makes up its figures, then two different basis are used to arrive at the figures here shown. One is a percent of the other.

Mr. HAGERMAN: How would that affect the question of comparison?

General HADLEY: It would show a larger percentage for equipment than would be fair.

Mr. HAGERMAN: The question is what is its percent upon the total amount?

General HADLEY: But the valuation of the equipment assigned to the State of Missouri is made upon one basis and the assignment of that portion of the replacement fund made to Missouri, is made upon an entirely different basis.

Mr. HAGERMAN: The question is how do the percents bear upon the valuation you fix upon the stuff?

2020 General HADLEY: If you would assign the value of the equipment to Missouri upon the same percentage as you assign the proportion of replacement fund to Missouri, instead of having two million and odd dollars as the value of the equipment in Missouri, you would probably have four million dollars.

Mr. STURGIS: Mr. Fisher endorsed this basis.

General HADLEY: He did not endorse the apportionment of expenses.

A. Mr. Fisher did.

General HADLEY:

Q. Mr. Fisher did not say anything about determining the relation between the replacement fund assigned to Missouri and the value of the equipment as in this Exhibit?

A. No sir.

Q. Here is the point I am undertaking to make clear: If the value of your equipment was assigned to Missouri upon the same basis that the apportionment of replacement of equipment or ex-

pense is assigned to Missouri, you would have a larger valuation assigned to Missouri of equipment than you would have assigned upon the track mileage basis?

A. I have stated that I do not know that. I thought it would be the same or larger. You seem to be convinced that it is larger. Perhaps you are right.

Q. I take it for granted that you do more business in Missouri than on the rest of the system.

A. And I claim that would not necessarily prove it.

Q. Assuming that the loading was the same all over the
2021 system as in Missouri, it would prove it?

A. Providing the loading was the same and the same proportion of empty to loads. That is, the same loading of trains and of cars, both.

Mr. LADD: We wish to go through the papers offered in evidence today, before proceeding with the further cross-examination of Mr. Sturgis.

In order to give Counsel for Defendant an opportunity to examine Exhibits offered at to-day's session the further hearing of testimony herein is adjourned until tomorrow, Wednesday, April 17, 1907, then to be resumed at the same place at two o'clock, P. M.

2022 KANSAS CITY, Mo., *April* 17, 1907.

Met pursuant *as* to adjournment as above on Wednesday, April 17, 1907, at two o'clock P. M., in the Federal B'ld'g., in Kansas City, Mo.

Present: Honorable F. L. Schofield, Special Master.

Mr. Frank Hagerman appeared in behalf of the Complainant.

Attorney General H. S. Hadley and S. B. Ladd appeared in behalf of the Defendant.

The following proceedings were had:

Cross-examination of C. I. STURGIS, continued.

By Mr. H. S. HADLEY:

Q. Did you make any computation as to what would be the difference between the amount assigned to the State of Missouri for replacement of equipment if assigned upon a mileage basis rather than upon a car mileage basis?

A. No sir, I did not.

Q. Have you the figures there by which you could show what proportion of the amount set aside for the purchase of equipment was assigned to the State of Missouri?

A. No sir, I haven't, but it is easily accessible.

Q. Can you get that percentage, and it can be forwarded without investigation, if that is satisfactory to Mr. Hagerman.

A. Very well.

Q. Your mileage in Missouri is one-eighth of the entire system *g*rack, isn't it?

2023 A. I don't recall. A trifle more than one-eighth. I should say, speaking generally. I have not the exact figures.

Q. Suppose you furnish to the stenographer the percentage of your mileage which is in Missouri and the percentage of entire expense set aside for the replacement of equipment, that was assigned to Missouri.

A. Exhibit 1 gives the total miles operated on June 30, 1905 for the system, and also the mileage operated in Missouri.

Q. It is a little less than one-eighth?

A. Yes sir.

The MASTER:

Q. Then you do not want that paper, General Hadley?

General HADLEY: That shows there the percentage of amount assigned to Missouri but the proportion to equipment I should like to have submitted.

Mr. HAGERMAN: I have no objection to that.

A. It is possible that one of these Exhibits shows that.

General HADLEY: It shows the total amount set aside for replacement of equipment and also for replacement of roadbed and superstructure and also the amount assigned to Missouri.

A. For the year 1905, it is shown on Exhibit 12.

Q. Give that percentage then.

A. (After calculating.) Approximately seventeen per cent.

Q. That is seventeen per cent of the entire expenses that is set aside for the replacement of quipment is assigned to the State of Missouri, although only one-eighth of your mileage, or less

2024 than one-eighth of your mileage, is located in Missouri. That is correct, isn't it?

A. That is approximately correct.

Mr. HAGERMAN:

Q. One-eighth would be about 12½ per cent, would it?

A. Yes sir.

General HADLEY:

Q. Then how do you reconcile that with the fact, or what importance do you attach to that, in view of the fact that your earnings in the State of Missouri are twice as much as your average earnings on the entire system?

(Witness calculates.)

The MASTER: I do not know just what you have in mind, General Hadley, but it occurs to me that the principle involved in that would be all right. If the maintenance of equipment is to keep the equipment in repair, the larger the service, the larger the repair.

General HADLEY: Unquestionably. I do not object to that.

The MASTER: Whether the ratio is correct or not.

General HADLEY: That is the only point. You see, they have taken the relation of the proportion set aside for the replacement of equipment just assigned to Missouri, and have determined just what percent that is upon the valuation of the equipment that is

made by the State Board of Equalization and compared that percentage with the percentage arrived at by taking the amount that is set aside for the replacement of roadbed and superstructure in comparison with the valuation upon roadbed and superstructure by the State Board of Equalization. The valuation of the
2025 equipment made by the State Board of Equalization is an apportionment upon a mileage basis and not upon a car mileage basis, so it is not a fair method of comparison, comparing the two ratios, in determining whether they have or have not charged against Missouri too much on the replacement of roadbed and superstructure. That is the argument I have in reference to this. It is not that I think it is an unfair method of assigning it. It is a fair method.

Q. Were you making some computation, Mr. Sturgis?

A. Merely verifying the figures I gave.

Q. The figures you have prepared show that upon the basis of locomotive mileage and freight car mileage, there is seventeen percent of the total that is in the State of Missouri: That is correct?

A. That is approximately correct. There is a small amount there for shop and tools. But the seventeen percent is the round figure. And as I stated in answer to your previous question, that is approximately correct.

Q. Notwithstanding the fact that there is only seventeen percent of the mileage of the cars in Missouri, yet that seventeen percent of the freight car mileage and locomotive mileage produces twenty-two percent of your entire gross revenue, doesn't it?

A. I haven't the figures for that here.

Q. Assuming that is correct it is approximately that. We went over that before in your examination. Assuming that is correct, do not those figures convince you that those figures in Missouri are higher than they are approximately for the rest of the system?

2026 A. No sir.

Q. It does not?

A. It does not necessarily follow, the density of traffic, the kind of freight and the loading of the cars, would all cut a figure.

Q. Is that car mileage expressive of density of traffic?

A. Not entirely, no sir.

Q. Wouldn't it be reasonable to assume that the loading and the number of empty cars would be reasonably the same for all parts of the system?

A. No sir.

Q. At least, it would not be as against lightly settled sections in Missouri, and that portion running off into Canada and that section of country, would it?

A. I couldn't tell that without seeing the figures. It might vary very materially.

Q. But as a general proposition, the better settled the country, in that section, the amount of empty space and the amount of empty cars would not be expected to be any greater than in an unsettled

or sparsely settled country: Wouldn't that be correct from a railroad standpoint, Mr. Sturgis?

A. I think not. You take the case of Wyoming for example, and I think you would find a smaller percent of less than carload freight in Wyoming than you would in Missouri, a good deal.

Q. You think the more sparsely settled the country and the longer the hauls, the better the loading would be and the less the amount of empty cars that would have to be hauled, one
2027 way or the other?

A. I think that would hold true of Wyoming. I don't know that you could make it a general rule. It would depend largely upon the characteristics of the land. In Wyoming it is practically all one straight main line.

Q. Have you any figures showing the percentage of empty space in the cars and the percentage of empty cars hauled in Missouri, as compared with other sections of the system?

A. No sir.

Q. You have no definite information on the subject?

A. No definite information at all on the subject.

Q. Any questioning along that line would be simply speculation, back and forth?

A. I have no definite information as to the empty space in the cars. We could get approximately the percentage of empty cars.

Q. But you have not done that?

A. I have not the figures here, no sir.

Questions by Mr. S. M. LADD:

Q. Have you with you a folder containing a map of the road, Mr. Sturgis?

A. No sir, I tried to get one at the hotel but some one had taken them all.

Q. Here is one. (Handing folder to witness.) Will you please turn to Exhibit 41 which you introduced here yesterday? I want to ask you some questions about that.

A. I have it.

2028 Q. Look on the second page: You have a table on that page which runs over on to the third page, which purports, as I understand it, to show the number of handlings which freight would undergo between the points mentioned: Is that right?

A. Yes sir.

Q. Now look down about two thirds of the way, the first column on that page. Will you point out on the map—you say there are ten handlings—where those handlings would be. Have you found Connelsville?

A. Yes sir.

Q. Where is Skidmore?

A. In the northwest part of the State.

Q. This freight going from Connelsville to Skidmore. I wish you would tell me what course it would take to make ten handlings necessary?

A. I don't know that I could positively tell you but I will be very glad if you wish me to show you what it may be.

Q. Well.

A. That probably moves from Connelsville to Sedan and Centerville.

Q. Up north?

A. Yes sir, north. Then down to Brookfield and to St. Joe, to Biglow and to Skidmore.

Q. Now where are the ten handlings?

A. You must remember that in computing ten handlings it is based upon some testimony given by Mr. Ludlam to the effect that unloading is a handling and loading is a handling.

Q. We would know that anyhow.

2029 A. You do?

Q. Yes. I want to know where are the ten handlings.

A. I have not counted these particular ones but they have been counted by a party who is familiar with the loading.

Q. But he is not here.

A. Connelsville is one; Centerville is two; Brookfield is two; St. Joe is two; Biglow is two; and Skidmore is the tenth.

Q. You mean at all these places, after it leaves Connelsville and before it reaches Skidmore, that stuff is loaded into one car and unloaded into another?

A. Yes sir.

Q. That is interstate freight because it goes up into Iowa?

A. That particular shipment would be interstate. That is, if that routing I spoke of is correct. If it is interstate freight, it would not have been included by Mr. Hamilton, I assume, in the State business.

Q. How large a place is Skidmore?

A. I don't know.

Q. How large a place is Connelsville?

A. They are both small places.

Q. Do you fancy there is any movement of freight between Connelsville and Skidmore?

A. I don't know and I don't know how much, but this was to show how many handlings were necessary to handle less than carload freight, from one point to another.

2030 Q. As a matter of fact, aren't those extreme cases?

A. I think the ten is extreme. In giving all, some were pretty small. Here is one, St. Louis to Canton.

Q. How many way-bills do you suppose you have in a month from Connelsville to Skidmore?

A. Very few.

Q. It does not signify anything, but, to tell the truth, I never heard of either of those places until I saw them here.

A. There are in your State. Now take St. Louis to——

Q. Wait a moment.

Take Liberty to Mexico, ten handlings; How is that?

A. This again is speculation upon my part, because I do not

handle these actual routings; but presumably Liberty is one; Cameron, two; Brookfield two;

Q. Let me ask you right there: Do you suppose it is changed at Cameron and Brookfield, too?

A. Yes, both of them. Brookfield is a division point.

Q. I know it is.

A. Hannibal, and that probably goes into St. Louis and comes out, although it may be transferred at Old Monroe. That does not make any difference. If it is transferred at Old Monroe it is not transferred at St. Louis; and if it is transferred at St. Louis, it is not transferred at Old Monroe. That makes the ten. Liberty one; Cameron two; Brookfield two; Hannibal, two; St. Louis, two; Mexico, one.

Q. Is there any considerable movement of freight from Liberty to Mexico?

2031 A. I should doubt it, in that case.

Q. Now, Mr. Sturgis, leaving out of this table which you have prepared here, the terminals at Kansas City, St. Joe, and St. Louis—Take the case where neither of those three places are terminals—is there any considerable movement of freight between any of those other places?

A. I should say probably there was. I do not know enough about the movement of freight to tell you how heavy it is. There is probably more or less business going on between all of them. Some very little and some more. Of course, when a person is shipping from one point to another, the position on two branch lines does not influence the shipper. There would be just as much reason to suppose there would be a movement between points on two different branches, as between points of the same size on the same main line, as I understand it. Of course, the work and expense to the railroad company is much greater, but the shipper does not consider that at all.

The MASTER:

Q. Although the rate per mile for the same distance would be the same in each case?

A. The charges would be the same.

Mr. LADD:

Q. Your second column on page one shows Madill to Macon, six handlings: How does that go?

A. One at Madill, two at Alexandria, or Keokuk, and two at Hannibal and one at Macon.

I must repeat, though, that I am supposing these routes from general experience without reference to the actual routing instructions.

2032 Q. Don't you know there is no transfer at all in Alexandria and that freight goes up to Keokuk in Iowa?

A. I do not say that it does but it probably would.

Q. Then that would be interstate freight?

A. I presume so. If so, that was probably left out of the figures.

Q. You have "St. Louis to Medill, four handlings": That would

go up to Keokuk, if transferred anywhere, and be transferred there and come back to Medill?

A. That would be presumably, one at St. Louis, two at either Alexandria or Keokuk, and one at Medill.

Q. Do you know whether those transfers are made at Keokuk or Alexandria? As a matter of fact, isn't it taken up to Keokuk?

A. I do not know whether it is or not.

Q. Take Worthington to Wheeling: Where would that go?

A. That I presume is the same general routing as Connelsville to Skidmore case.

Q. That would go up into Iowa?

A. It would go to Centerville.

Q. Who prepared this statement?

A. It was prepared at my request by Mr. F. C. Rice, or under his direction. He was the general superintendent of the road, and is one of our second vice-presidents' lieutenants, who looks after trains and train-loading.

Q. Now with respect to most of these towns, are you able to state whether the volume of business is important or unimportant?

2033 A. Undoubtedly, some of them are very important; undoubtedly, some of them are of minor importance.

Q. Leaving out those which have for one of the terminals Kansas City, St. Louis or St. Joe, are not the rest of them relatively very unimportant.

A. No sir, I do not believe it is a fact, because this of course refers to less than carload business, which is only a small portion any way of the total business; and I do not understand that these cover all cases, and this statement should not be understood as covering all cases, where more than two handlings are made. There may be hundreds of other cases. These are just examples.

Q. Take a case in your last column, Canton to Skidmore: Do you suppose there is any volume of freight, to speak of, from Canton to Skidmore in less than carload lots?

A. I couldn't tell you. But you take the case of freight from any point on the main line of the Hannibal and St. Joe, east of Brookfield, to another point west, and there would be four handlings.

Q. That is all less than carload freight you are talking about?

A. Yes sir, this all refers to less than carload freight. Of course, in the case of carload freight, there is not the unloading and the loading. But there is in the switching out of the train and into the other train. It is not as expensive handling but it is handling in a sense.

Q. Now, I will call your attention to just one more case:

2034 Connelsville to Tarkio, ten handlings.

Connelsville is way over to the eastern part of the State, east of the center, and Tarkio is in the northwest part?

A. Practically the same as Skidmore, except the junction at Bigelow is dropped and the junction at Connelsville is substituted.

Q. What kind of freight in less than carload lots would be handled from Connelsville to Tarkio?

A. I don't know.

Q. Any appreciable quantity?
A. That I could not tell you.
Q. Is there any body here that would know?
A. I don't know of anybody. You would have to get a regular routing man. They could only guess at it. The only way would be to get the way-bills and actually ascertain.
Q. Will you please look at your Exhibit which you offered yesterday as Exhibit 36-a In paragraph "c" of your Exhibit 36-a, you criticised the fact that the State expert has included in Exhibit 36 as state freight only the live-stock out of Kansas City and has excluded from State freight the live-stock into Kansas City?
A. Yes sir.
Q. It is already in evidence here and was referred to, that the total, so far as that particular of it was concerned, was prepared by agreement between Mr. Whitcomb and Mr. Hamilton; Now you say Mr. Whitcomb has no authority: who was Mr. Whitcomb?
A. Mr. Whitcomb was Chief Clerk in the Auditor of
2035 Freight Accounts office. The understanding, under advice from Haskins & Sells, was that any question of dispute should be referred to Mr. Larmar or myself. Of course I was not with Mr. Whitcomb all the time but he tells me he made no such agreement.

Mr. LADD: I move to strike that out. Bring Mr. Whitcomb here.
The MASTER: That is improper, of course.
Mr. LADD: Is Mr. Whitcomb here?

A. No sir, he is in Chicago.
Q. What did you do? Did you turn Mr. Hamilton over to Mr. Larmar when he got there to do this work?
A. Yes sir.
Q. Then don't you know that Mr. Larmar turned him over to Mr. Whitcomb?
A. No sir, I don't.
Q. And that his constant dealings were with Mr. Whitcomb, and that Mr. Whitcomb had immediate charge of all this?
A. Mr. Whitcomb would only have charge under Mr. Larmar.
Q. I know, but don't you know that Mr. Whitcomb was the man that Mr. Hamilton had to meet daily, and hourly, in regard to this matter? That he was the man deputed by Mr. Larmar to attend to Mr. Hamilton and deal with him?
A. Of course, Mr. Whitcomb as chief clerk had charge of the clerks working with Mr. Hamilton, just as he has charge of every clerk in the office under any class of work, but always under Mr. Larmar, and Mr. Larmar under me.
Q. Now, you think—I am not going to say what my opin-
2036 ion about it is because it doesn't make any difference—that the live-stock into Kansas City ought to have been included in this Exhibit 36 as state freight: That is your idea, is it?
A. No sir, I didn't say that. I think that is a legal point upon which I am not able to pass, but in my judgment, both in and out should have been put in the same class.

Q. Now, the part that went out is treated by our expert in Exhibit 36 as state freight, isn't it?

A. So I understand.

Q. That is what your statement here says, for instance, (indicating Exhibit 36-a) and the part that went into the stockyards is treated as interstate freight?

A. So I understand.

Q. Is that the only criticism you have to make upon the figures in Exhibit 36, as to their accuracy?

A. I think this Exhibit 36-a sets forth a number of criticisms to it.

Q. Is there anything wrong with the figures in the State's Exhibit 36, in your judgment, except that a part of the live stock has been treated as interstate instead of State?

A. This whole Exhibit 36-a points out objections. If you mean whether on the question of any other freight having been wrongfully placed in state or interstate, I have not questioned that point.

Q. What other objection is there to Exhibit 36, to its accuracy. I do not mean any deductions that we may seek to draw from
2037 the figures in our Exhibit 36, but bearing on this question of the proper disposition of the live-stock coming out of Kansas City, is there any trouble about the accuracy of the figures shown in Exhibit 36?

A. No other question of the accuracy has been brought to my attention. I did not follow each step through, as the object in making up the figure was to make them up as requested by the Attorney General, and he had his representative go along with the work as it was done to see whether it was made up in accordance with the Attorney General wishes. And, therefore, I cannot say that the statement is either correct or incorrect.

Q. How many of your men were employed on that work?

A. My recollection is that it varied from three to eight. Mr. Hamilton can tell better than I can.

Q. And Haskins & Sells had one man, Mr. Hamilton?

A. He had one man to oversee it.

Q. Mr. Hamilton was the only man from Haskins & Sells?

A. He had one man in Chicago and one man outside.

Q. Suppose the live stock into Kansas City, the revenue from that, had been included as state freight in Exhibit 36, would it have raised the average revenue per ton mile on the state freight?

A. My impression has been that it would work the other way.

Q. Isn't live stock a pretty good revenue producer per ton and per ton mile?

A. My impression is that it works the other way. I did
2038 not keep in touch with the rates, and it is only an impression.

Q. Don't you think that the rate per 100 miles, per ton, or for fifty miles, or for any distance, per ton on livestock, is much greater than the average on all the freight you carry?

A. My impression has been the other way.

Q. You think it is lower than the average?

A. That has been my impression. That is a thing that the study of classifications would tell. Mr. Crosby could doubtless readily tell you.

Q. How did you handle the livestock business at Kansas City in your Exhibit 1, which showed earnings, state and interstate?

A. My understanding is that the livestock for Kansas City both in and out, where it came from another Missouri point or went to another Missouri point, was treated entirely as State business.

The MASTER:

Q. I do not care to anticipate you gentlemen, but it may be proper to ask at this time: It appears from the Exhibit offered here yesterday that all cattle shipped into and out of Kansas City stockyards, over the Burlington railroad, crosses the State Line?

Mr. LADD: Yes sir.

The MASTER: Do you contend that that makes all cattle shipped into and out of Kansas City over the Burlington road, interstate?

Mr. LADD: I don't think we care very much. It was
2039 developed yesterday, for the first time in our knowledge, by these maps, that it all goes into Kansas; at one place at least 74 feet into Kansas, or for quite a long distance.

The MASTER: If the State Line is the "Dead Line" which separates state and interstate, it is as good as seventy four miles.

Mr. HAGERMAN: Provided it is not a switching proposition. As I propose to show by Mr. Sturgis, even if you put all of the live stock business over into state or into interstate, it will not affect the result one way or the other. Mr. Sturgis says it is wrong on principle to divide it. If the State Line is the "Dead Line", it is either the one thing or the other.

Mr. LADD:

Q. Mr. Sturgis, do you know what that live stock business amounted to?

A. I do not and there was no way of telling without getting at the way-bills again. It would have been a very large piece of work. The question did not come up until after Mr. Hamilton had completed his examination, as I recall it. That is, it was not called to my attention.

Q. Will you please take your Exhibit 41-a which was offered yesterday?

Mr. HAGERMAN: That is the one that is copied from the Missouri Pacific Exhibit, being Exhibit No. 55 in the Missouri Pacific case.

Mr. LADD:

Q. Your Exhibit 41-a, in which you attack by your first paragraph Exhibit 41, is the same one, word for word, which was intro-
2040 duced in the Missouri Pacific case, as Exhibit 55, isn't it?

A. Yes sir. I did not hear the Missouri Pacific case, but that was given to me as an Exhibit in the Missouri Pacific case.

Q. You did not prepare this yourself?

A. No sir, this came from the Missouri Pacific Exhibit, as stated.

Questions by Attorney General HADLEY:

Q. Did you read it, Mr. Sturgis?
A. Yes sir, every word of it.
Q. When? Before or after you put it in as a part of your testimony?
A. Before. I read it in Chicago.
Q. Do you want to be understood as expressing your personal opinion of the correctness of the statement made in that Exhibit?
A. That was my impression when I read it, that it was a proper and correct statement of the case.
Q. Do you wish that to be accepted as expressing your reasons of revenue as opposed to the ton mile theory of apportioning expenses?
A. That was the intention when I presented it.
Q. You intend it now, do you?
A. Yes sir. As I remember it, I saw nothing in it that did not coincide with my views.
Q. There is something said there with reference to the proposition that that is the method in general use: Do you subscribe to
2041 that statement?
A. Give me reference to the particular part where that occurs.
Q. First, I will ask you what is your information or knowledge, as to whether the ton mile or revenue theory has been used in previous investigation: Have you any information upon that?
A. My understanding is distinctly that it is the revenue theory.
Q. In what?
A. In the cases cited here. Take what we call "the Nebraska rate case"; that is a case I worked over a good deal.
Q. Did you ever read that case?
A. Yes sir.
Q. You know the amount of increased cost that was assigned to state as compared with interstate business in that case?
A. I know that the testimony, as I recall it, recited that it was three or more times, as far as the railroad experts were concerned; and the Secretary of the Nebraska Commission, if I remember rightly, stated that it was ten per cent or some such figure. And the decision quoted that, and it was a fact, that that was all that was needed to show that the rates were confiscatory; and the decision did not in any way imply or question but that the difference might be considerably more than ten per cent. That is, it did not contradict, as I remember it, the statement of the Railroad experts.
2042 Q. Was there any choice made in the decision in the "Nebraska case" as you refer to it, between the ton mile theory and the revenue theory?
A. I do not remember that the contention came up. I read that case a good many years ago. Of course it has been a case of great interest to all of us.
Q. It was your road that was involved?
A. Our road was one of the roads?
Q. The truth is that there was no conflict in that case, and no

decision made, as to the correctness of the ton mile theory as compared with the revenue theory in the division of expenses?

A. It was my presumption that they did not do it because they realized that it was out of the question.

Q. Whatever reason prompted them in the matter, there was no decision made on that point: What are the facts? Is that — or not so?

A. If I may continue my answer, the revenue theory was accepted as the only possible theory, and no other was considered, on that account.

Q. None other was mentioned in the case.

A. I did not read all the testimony. I read the decision and some of the testimony, as I recall it.

Q. In the decision was there anything mentioned or said in reference to selecting one theory in preference to another?

A. Not that I recall.

Q. Do you know of any case in existence which is referred
2043 to here, wherein there was any decision made as to the relative correctness of the two theories of apportioning freight expenses?

A. Whether in that Nebraska case, the others were eliminated by implication or not, I cannot now say.

Q. I asked you about other cases: Can you say anything about them? Have you ever read them?

A. Yes sir, I read the North Dakota case, I remember, and the South Dakota case. I have read most of these cases but not all of them.

Q. Was there any decision made, or any comparative judgment passed upon the two systems of apportioning expenses?

A. I am talking from memory. Those cases are read once, or at most twice, and not within a year. But it is impossible for me to answer from memory. The records will show.

Q. Certainly they will. You have testified here to it, in Exhibit 55, and will you say now that you do not recollect what theory was adopted in that case in opposition to any other theory? Do I understand you correctly? Is that right?

A. I do not recall whether the wording of those cases specifically mentioned the two theories or not.

Q. Is there any lack of uniformity in dividing the expenses of doing state business upon the ton mile theory?

A. I don't know what you mean by "lack of uniformity."

Q. In this statement you have adopted as yours, you say that the revenue theory is a uniform theory: Isn't any theory adopted for the division of expenses between state and interstate freight, a uniform system?

A. What is meant there is that you can apply it right
2044 straight through. You can apply it to distinguishing expense between freight and passenger business. The ton mile theory is not a uniform theory because you cannot apply it to apportioning passenger earnings, nor apply it to the apportionment of miscellaneous earnings.

Q. Any ratio or method determined upon which involves a ratio is uniform if you apply it to all the expenses: There cannot be any trouble or controversy about that, can there?

A. If you can carry it out, and get at the cost for a given unit, applying it to all expenses, expenses of all kinds, from start to finish, then you could probably call it uniform, as I should understand the definition of the word. But if you cannot divide all the expenses between freight and passenger, for example, on that basis, then it is not uniform.

Q. All the expenses of conducting transportation as compared with the passenger and freight business can be determined actually, can't it?

A. No sir, not by any means.

Q. Take the train crews, and the expense of the locomotives, and the expense of maintenance of equipment, those are all kept separate, aren't they, and you have given them so in this case?

A. I beg your pardon, I have not given them so in this case, to the best of my recollection.

Q. Was the division between freight and passenger expenses you gave in this case based upon a revenue apportionment?

2045 A. To the best of my recollection, I did not give figures as between freight and passenger. That Exhibit was offered by the State, and I distinctly stated at the time it was not offered by me and should not be used for the division of rates and it was not made up for that purpose and should not be used in any way for that purpose. It was distinctly misleading for that purpose.

The MASTER:

Q. What is that Exhibit?

A. Exhibit 6.

General HADLEY:

Q. That Exhibit 6 was a record which you had in your office, *aw*sn't it?

A. That was a record we had in our office, and as I explained at the time, when I was testifying on the subject of that, we did not bring that into the case. That we were allowing Mr. Fisher to see and to have pretty much anything he wanted, and I might say anything, without restriction. He asked one of the men, who had no authority to give it to him, for a copy of the statement that we had in the office, and he brought it into the case.

Q. Mr. Sturgis, aren't these the facts of the case: I asked you in the examination in Chicago, whether you had such a statement and you said you did, that you had such a record, I asked you to produce it and you at first refused to produce it, and then, after conference with your lawyer, Judge Spencer, Judge Spencer agreed to have it produced in the case and it was offered as part of my cross-examination of you in Chicago?

2046 A. The record will show, but my impression is that is not the fact. At all events, if you go back to the records, you will see the protest was made strongly at the time, that that

division was made for the purpose of measuring the efficiency of our operating officers. That by using the same basis of apportionment one month after another and one year after another, we could tell, for a particular territory, whether a superintendent was doing his work better than before or not. That is the sole purpose for which those figures are made, and they have never been used by our Company, nor have similar figures ever been used by any other Company, so far as I know, to determine the basis of its rates.

Q. But, Mr. Sturgis, those were the Company's figures prepared by it for its own use, in the conduct of its road, weren't they?

A. Not in the conduct of its road but in the measure of the efficiency of its officers.

Q. What do you call that, if not the conduct of its road? The road is conducted by the employees and officers, and in using these figures, you use them as a basis of their action: Is that what you mean to say?

A. I mean to say the cars and engines, spades, shovels, coal and all those things are used as a means of operating the road. This is merely a looking-glass, as it were, a measure to see how successfully the operating officials have conducted their business.

Q. But it is your own looking-glass?

A. Yes, sir, it is our own looking-glass.

2047 Q. Made by your own employees?

A. Made by our own employees for that purpose.

Q. And made in order that you should look at yourself in it?

A. Made in order that we should look at ourselves in it.

Q. And if you do not look just right, as indicated by that looking-glass, you proceed to make a correction, and act upon the vision there reflected?

A. Yes sir, that is the idea.

Q. That looking-glass is not prepared upon a revenue basis of construction?

A. No sir.

Q. So whether this looking-glass amounts to anything or not, it is not prepared for such use as you do use it for, upon the same theory for apportioning expenses between state and interstate freight, as you ask the Master to adopt in this case, is it?

A. That is very true.

Q. Now, Mr. Sturgis, isn't it true within your knowledge, that while this theory of apportioning expenses between state and interstate business has been in cases past adopted, and has been followed at times, even by the railroads themselves, it is now regarded as an obsolete method of apportioning those expenses, by a majority of railroad experts?

A. Are you referring to the revenue basis?

Q. Yes.

A. No sir, I do not agree to any such proposition, and in fact I think the reverse is the truth.

2048 Q. You never knew of the ton mile theory being adopted until recent years, did you?

A. I thought you were talking about the revenue theory.

Q. I am talking now about the ton mile theory. It is only in recent years that the ton mile theory has been urged in certain portions of the United States, as the right theory of apportioning the expenses of doing freight business?

A. The question of the use of the ton mile as the measure of efficiency of the operating officers, as in the looking-glass idea I gave you, has been used in some parts of the country, and I think I can say has been used on the Burlington road for fifteen years, to a certain extent.

Q. For the purpose of apportioning expenses between state and interstate freight, whenever that question has come up within recent years, it is a theory that has been adopted within recent years: Isn't that your understanding? I am not talking now about statistical information for railroads themselves, but as a measure of the reasonableness for the State regulation of rates?

A. I do not know how far back that goes. Personally, I have always been very much opposed to any such basis of figuring.

Q. Are you familiar with the writing of Prof. Mayer of the University of Michigan?

A. You mean the University of Wisconsin. I know him very well.

Q. He advocates the theory of the ton mile basis?

2049 A. Not that I know of.

Q. In a published book on railroads, he advocates that theory?

A. That I can not state.

Q. The railroad commission of the State of Wisconsin, which is regarded by railroad men as the most efficient in the country—isn't it?

A. So I told you yesterday.

Q. That was not the first information I had. That Commission adopted the theory of the ton mile of apportioning expenses between state and interstate business?

A. I do not know that it does. It does not call for any complete division of operating expenses between freight and passenger, so far as I know. In fact I am very certain it has not.

Q. Have you read Mr. Johnson's testimony in this case, where he said he arrived at a different understanding of the decision of the Wisconsin Board?

A. I have not. Mr. Mayer is a member of that Board.

Q. Are you familiar with the decision of the Kentucky Board, of which Mr. McCord is chairman, in which this theory of the ton mile is considered?

A. Yes sir, I have read part of that and I remember that in the early part of this case, you or someone stated that that was written by the statistician of the Interstate Commerce Commission.

A. Yes.

2050 A. It had such a remarkable theory in it, according to my notions, that when I was next in Washington——

Q. It was written by a clerk of the Interstate Commerce Commission.

A. A clerk?

Q. Yes sir, the Chief Clerk.
A. Mr. Burleigh?
Q. I forget his name but he was employed there for two years. Anyway we won't go into that. That is based upon hearsay with both of us.
Have you read that decision, by whomsoever it was written?
A. I have read some of it.
Q. Do you agree with that?
A. I do not.
Q. That is one State and one Board that has adopted the ton mile theory in dealing with railroad companies: Is that your understanding?
A. Wasn't that a particular case? A lawsuit? That was not a general order, was it?
Q. A general order affecting every road in the State of Kentucky.
A. I know Mr. McCord and I have met the other members of the commission and I had read the ruling, and I think it is wrong.
Q. You heard Colonel Gray's testimony in this case?
A. Yes sir, I did.
2051 Q. He subscribed himself as enthusiastically an advocate of the ton mile theory?
A. He did.
Q. And you do not agree with Colonel Gray?
A. Most emphatically, I do not.
Q. Did you hear the testimony of Mr. Henry Miller of the Wabash road, wherein he said, that when you get down to the ton mile theory of apportioning freight expenses, you had got down to brass tacks—or have you read that testimony since it was given?
A. I have not read Mr. Miller's testimony but I presume he was talking about operating expenses as a measure of the work he does, as he is an operating man, and has undoubtedly been held strictly to account on the ton mile basis as a measure of his efficiency.
Q. Do you know what Mr. Miller testified to, upon that point? Have you read his testimony?
A. I have not read his testimony.
Q. Have you been informed what he testified?
A. Just about in the words you informed me now.
Q. You do not agree with Mr. Miller of the Wabash?
A. If he so stated, I do not agree with him, as applied to rates.
Q. What other experts and other State Boards of Railroad Warehouse Commissioners have adopted the ton mile theory in preference to the revenue theory, outside of those I have mentioned?
2051½ A. I do not know. We are not required, in eleven States we go through, to make an apportionment of expenses between freight and passenger traffic. The Commissioners in many of the States—and the Interstate Commerce Commission, which did require such an apportionment, dropped it entirely in 1903, as not a proper basis for measuring rates.
Q. You are talking now about an apportionment between passenger and freight?
A. That was absolutely necessary, as the first step.

Q. If you did apportion between passenger and freight, and made a report to the Interstate Commerce Commission, did you make a report on the same basis as this Exhibit 6 introduced in this case?

A. No sir, a different basis.

Q. What basis did you adopt then, the revenue basis?

A. My recollection is the report to the Interstate Commerce Commission was largely on a ton mileage basis.

Q. That was for apportioning expenses incident to maintenance of way and structures, wasn't it?

A. No sir, it was also incident to an apportionment between freight and passenger, as I remember it, to some extent. And that same kind of an arbitrary basis, must necessarily be used if you attempt to apportion even for the uses we had to apportion the thing.

There are probably fifty per cent of the expenses that cannot be apportioned to freight or to passenger traffic, and you have simply got to take an arbitrary basis for the purpose.

2052 You have got to take an engine mile, whether it is hauling a fast passenger train or a slow one; a heavy passenger train or a light one; and compare it, one for one, with the freight locomotive hauling a heavy freight train or hauling a freight train with a big engine or a small engine. All counts as one. You have got to use such arbitrary means.

Q. That is, in reference to fifty per cent apportioned to the passenger business?

A. Yes sir.

Q. Had you ever, prior to this case, prepared any such apportionment between State and interstate freight business?

A. Let me first add to my last remarks, that I do not mean to imply that that engine mileage was on a freight basis, applied to the fifty per cent. I mean that that or some other arbitrary basis had to be used for about fifty per cent.

Q. At all events, the basis upon which you did make an apportionment of your expense of doing the passenger business and the freight business, to the Interstate Commerce Commission, was a method which they prescribed, and not a method which the Company had any volition in the choosing of.

A. A method they prescribed, as I recall it. That is, it was a regular rule by the Commission, and I believe it read that where an item of expense could be set aside as either freight or passenger, it was to be so set aside; and the balance of the expenses were to be divided on a train mileage basis. I am talking now from recollection.

Q. There was a method of apportioning required and directed by the Interstate Commerce Commission?

2053 A. That is my recollection.

Q. Exhibit 6 apportions those expenses upon your method of calculation for statistical purposes as you explained?

A. Yes sir.

Q. And that is upon a different basis?

A. Partly different and partly the same.

Q. That is insofar as the expenses could be exactly ascertained, you did it?

A. Yes sir.

Q. It was the same in that regard?

A. Yes sir.

Q. And where it comes to a question of whether it is either an arbitrary or an approximate division, you adopt a different method?

A. Yes sir.

The MASTER:

Q. Having separated the expenses into those that arose from the operation of freight business and those that arose from the operation of the passenger business, upon any theory that you may have adopted, why should you necessarily adopt the same theory for apportioning the freight business to the several classes of freight? What if it is not uniform? What advantages would there be in uniformity? Why should you use the same unit in the one case as in the other? Having ascertained that the given amount of expense arose from the operation of the freight business, and having occasion to separate that expense into various kinds of freight—for instance, state and interstate, why can't you use any other than the same unit that you would use in separating all expenses

2054 into freight and passenger?

A. We found for the purposes of our operating officials, or in any way, in connection with that Exhibit 6, attempted to divide between the different classes of business, either classes of freight such as classes, A, B, C and D, 1 to 5, etc., or between state and interstate. When we took our total freight expenses for a particular part of the road, as I have recited, apportioning between freight and passenger first, then we simply divide by the ton miles, because we have not the revenue divided between the carload and less than carload, or state and interstate. And these figures that we make up are not serviceable as a comparison of the work on one division with another or one road with another, because the variation on every division in the proportion of each class of freight will be enough to throw out any comparison, if utility is to measure the particular man who is working on the same division this month that he did last, or this year that he did last.

Q. I understand that perfectly: But the question I wish to ask you did not have reference to Exhibit 6. Except for the purpose of compiling information from which Exhibit 6 was drawn. I am speaking generally.

Having separated the expenses derived from the railroad freight business, such as accrued from handling freight and such as accrued from handling passenger business: Having ascertained in a word, the expenses that the railroad incurred from its freight business, and then desiring to separate that expense and charge the State of Missouri with the portion of it which was incurred in the

2055 handling of freight business wholly within the State, why should you necessarily use the same unit of measure in that

case that you used in separating passenger expenses from the freight expenses? Why couldn't you adopt some other measure for that particular purpose, that would be as accurate or perhaps more accurate than the other, without having it uniform at all? What would be the value of uniformity in a case of that sort?

A. It seems to me that you have got here the facts before you from the start that you cannot get at the figures accurately. You have got to make an arbitrary apportionment.

Now what is the result of it all? The result of it all is to get your net, which is applicable to your taxes, your fixed charges and your dividends. Now they both must contribute, whether freight or passenger, or state or interstate.

It seems to me it is proper to measure that net on a uniform basis for all business. I grant that in the case of considering the expenses of any one particular part of the business, or course you can take a different basis. But when you remember that the whole thing is to determine the net results from both classes of business, and more than that, not only freight and passenger but also miscellaneous, then you should take a basis which is uniform and apply it to them all. And the only basis for that purpose that I know of, that would be at all equitable, would be the revenue basis.

That covers the point I think. I misunderstood your first point.

General HADLEY:

Q. Do you know how much is said to be, in the case of your road, the expense of operating an ordinary passenger train a mile? Have you made any approximation upon that proposition?

2056

A. Under this basis that we divide the expense for the purpose of measuring the operating efficiency, we of course can divide and obtain a uniform cost per mile, by dividing that passenger cost.

Q. By the number of passenger *k*iles?

A. Yes sir, that is a mere mathematical calculation.

Q. I heard the statement made, I think by a representative of your road, that it cost one dollar a mile to operate a passenger train: Did you make such a calculation for Mr. Eustis?

A. I probably did. That is, it was made in my office or he used the figures gotten from my office.

Q. Do you know it cost one dollar a mile?

A. No sir, you cannot tell. Trains will vary tremendously.

Q. Did you furnish Mr. Eustis any such figures as the basis of your examination of the records of the Burlington road—as the result of your investigation?

A. My understanding was that Mr. Eustis did not use the figures that would entail a division between freight and passenger traffic, on the ground that they were not reliable.

Q. What I am asking you is, did you furnish to Mr. Eustis any figures based upon your calculation and examination, to the effect that it cost one dollar a mile to operate a passenger train on your road?

2057 A. I must explain in answer to that, that any figures he used were probably made by the auditing department, because we made up the figures. If he merely guessed at it and said "I think it cost a dollar", or, "I think it cost about a dollar to operate a train" that is his own guess. But he makes no statistics and therefore if he talked from the books, so to speak, he must have gotten the figures from the operating department.

Q. I am not asking you what Mr. Eustis said, because that is not important, but I ask you did you furnish to Mr. Eustis, from any information coming from your department, showing that the Burlington Railway Company had ascertained from investigation or information, or any source, that it cost one dollar a mile to operate a passenger train?

A. I do not know that I can say any more than I have.

Q. Is that your idea from your investigation and knowledge of the facts and figures, that it does cost one dollar a mile to operate a passenger train?

A. I say I do not know what it costs and I say I do not personally know, nor do I know of any one in the department, giving Mr. Eustis a specific figure of cost in any way for use.

Q. Have you made any calculation and have you any information as to the cost per mile of operating a passenger train?

A. None other than I explained to you, that on these divisions, taking the expenses, from this arbitrary division between freight and passenger, and taking the total number of train miles,
2058 you get a figure which represents, on the basis of those figures, the cost of a train a mile.

Q. Have you figured that out in this case or at any other time, to determine whether that amounted to approximately one dollar a mile.

A. In making up the statistics we make up every month, for the purpose I have told you, on the sheets there appears how much those expenses would amount to for the train mile.

Q. What were they approximately, one dollar?

A. I cannot tell you without seeing them.

Q. Anyway if it were found that for a number of months, the expenses according to your method of calculation amounted to, approximately, one dollar a mile for the carrying on of the passenger business, would not that in your opinion be a safe measure of expense to apply to the conducting of the passenger business, and separating it from the doing of the freight business?

A. Not with any exactness.

Q. With such exactness as if possible in human affairs, where it is not possible to divide it on an exact mathematical basis?

A. If those figures show up one dollar on one part of the road, they might show up a very different figure on another part of the road.

Q. I am talking about the average.

A. If those figures show even a dollar, it is probably somewhere between seventy-five cents and a dollar and a quarter.

2059 Q. Where?

A. For the road. If you could get it accurately. If it were possible to get the actual figure, you will probably find it somewhere between seventy-five cents and a dollar and a quarter.

Q. Take your Exhibit 42: Now what proportion of the entire expenses of the doing of the business, passenger and freight, did you assign to the state freight in that Exhibit?

A. 13.11 per cent.

Q. That is the same relation that the earnings upon state freight bear to all of the earnings, isn't it?

A. That is the proportion that the earnings of state freight bear to the total earnings on all kinds of business.

Q. Did you prepare that Exhibit yourself?

A. Yes sir, it is based right on this Exhibit No. 1.

The MASTER:

Q. All kinds of business or all kinds of freight business?

A. 13.11 per cent is of the total state earnings, freight, passenger and miscellaneous. It is directly taken from our Exhibit No. 1. I did not prepare the figures myself.

General HADLEY:

Q. I am not criticising your accuracy but the method you are subscribing to in your Exhibit 42.

A. Yes sir.

Q. Don't you remember on the occasion of your second cross-examination in Chicago, you stated, that after thinking the matter over you had come to the conclusion that the fairer method and more correct method, would be to charge against the state freight that

2060 proportion of the total freight expenses which the state freight earnings bore to the total freight earnings: Don't you remember making that statement?

A. Of course my testimony will speak for itself. I do not remember beyond the general facts that there was some question raised as to the method of apportionment. That was six months ago, nearly, and I do not recall the testimony.

Q. Don't you recall you said after mature reflection, following your first cross-examination, that y-u had come to a decision that the more correct basis than you had heretofore given, to give the state its proportion, would be to take that proportion that the state freight earnings bore to the entire freight earnings: And if you did make that statement, do you now wish to adhere to it or adhere to the theory set forth in Exhibit 42?

A. As I look at it now, the state freight is 13.11 per cent of the total earnings, and that is exactly the same as 19.67 per cent of 66.63 per cent, which represents relatively the proportion of local to total freight, and the total freight to the total earnings. In other words, whichever way you work it, the result is exactly the same.

Q. You do not claim that the state freight earnings bear the same proportion to all the earnings, freight and passenger, that the state freight earnings bear to all of the freight earnings, do you?

A. No sir, but in one case——

Q. Then you would not get the same amount of expense assigned to the state freight business, if you would use one ratio of ap-
2061 portionment, as you would if you used the other, would you?
A. I say now you would.

Mr. HAGERMAN: General Hadley is saying one thing and you are answering another.

General HADLEY:

Q. Do you mean to say, Mr. Sturgis, that the freight expenses are the same proportion of all of the expenses of the road, as the freight earnings are of all of the earnings of the road?

A. Ask that again?

Q. Whether the freight expenses bear the same relation to all of the expenses as the freight earnings are of all of the earnings?

A. That is the basis, as I understand, upon which the calculation has been made.

Q. If that relation is not the same, then you have not used the same unit in the different testimony you have given in this case?

A. 66.63 per cent are both earnings or total expenses, do you mean the total expenses of the freight?

Q. What proportion of all of the expenses are all of the freight expenses?

A. 66.63 per cent.

Q. And what proportion of all the earnings are all the freight earnings?

A. 66.63 per cent. The same per cent.

Q. And what, according to Exhibit 6?

2062 A. I don't know about Exhibit 6. I have not figured those per cents on that Exhibit.

Q. Then you simply say that because the freight earnings are 66.63 per cent of all the earnings, you assign 66.63 per cent of all the expenses to the doing of the freight business: Is that it?

A. So I understand.

Q. Now if the state freight earnings bear a different relation to all of the freight earnings, that the state freight earnings bear to all the earnings from any class, you would get a different unit for apportioning the expenses, if you adopt the theory you first proposed, or adopt the theory you proposed on the second examination, would you?

A. I do not recall what that point was and I do not understand it from what you say now. From your present statement, it does not seem to me to make any difference in the result.

Q. Why did you state that you wished to make a change in your first testimony as being fairer and more correct than the one heretofore given?

A. I do not recall that testimony.

Mr. HAGERMAN: I think General Hadley has it just twisted around, and inadvertently you gave the 19 per cent.

A. Let me make this point: I can see it would perhaps have been a little clearer to have taken a first step and found out first the ex-

penses belonging to company freight and then take another
2063 step and find of those expenses how much belonged to state freight. That would have made it clearer, perhaps, in the testimony. But the result would have been exactly the same.

General HADLEY:

Q. That is your opinion of it, that the result would have been exactly the same?

A. I know it would. There is no question about it. The proof of it is that 13.11 percent is the same as 19.67 percent of 66.63 per cent.

Q. But, Mr. Sturgis, if you would take the freight expenses as given in Exhibit 6, and apportioned there between freight and passenger as they are, then you would not get the same unit by taking the relation of state freight earnings to all earnings, that you would get by taking the relation of state freight earnings to all earnings?

A. Of course not. We do not admit that cuts any figure in this case.

Q. I am not asking you whether you concede it or not. But conceding for the sake of argument, that the apportionment of freight and passenger business that y-u have made in Exhibit 6 is more correct than the revenue basis which you have made in Exhibit 1——

A. I will not admit it for a minute.

Q. Not for the purpose of answering a question?

A. Of course it follows that if the expenses of all freight, which you happen to take, ran 66.63 of the total expenses, your result is going to come out differently.

Q. And if you are going to take Exhibit 6 instead of Ex-
2064 hibit 1, you would get a different ratio from the one you would from taking Exhibit 1?

The MASTER: That is obvious.

A. If that is the point, I would not talk so much. I did not understand that.

General HADLEY:

Q. Take this illustration, and then I think I will close any inquiries of you.

Assume that all your earnings in the freight business were five million dollars, for a certain period; four millions of it were from interstate freight business and one million dollars of it were from state business: Assume that all of the expenses either determined by the way you determined them in Exhibit 6, or in Exhibit 1, were four million dollars; then upon the revenue basis of apportioning expenses between state and interstate freight, what proportion of the four million dollars freight expenses would you assign to state freight and what proportion to interstate freight?

A. You would assign twenty percent to state freight. And eighty percent to interstate freight.

Q. That is, you would take one-fifth and four-fifths, divided in proportion to revenue?

A. Yes sir.

Q. Assume that the legislature comes along and reduces the state rates twenty-five percent and in the next period corresponding to the same period in which you had earned your five million dollars, and the expenses were the same, and the road hauls the same number of ton miles of freight, what would be the revenue it would receive?

2065 A. The total revenue, following out these mathematical figures, $4,750,000.

Q. Then what proportion of the four million dollars of expenses would you assign to the doing of the state freight business?

A. In that case it would change the percent. Now very much, but a little. You would allot about twenty-one percent to the state.

Q. How did you get that figure, Mr. Sturgis?

A. In arriving at the twenty percent for state business previously, I found out what percent one million dollars was of five million dollars. Now you have reduced the revenue from all freight to $4,750,000, so the problem becomes what percent of $4,750,000 one million dollars is?

Q. No sir, $4,750,000.

A. You are mistaken.

Q. Your entire revenue is $4,750,000?

A. Yes sir.

Q. $750,000 is derived from state freight and four million dollars is derived from interstate freight: Now upon that abstract proposition considered alone, how would you divide $4,000,000 expense of doing all that business?

A. That is one way. That is twenty-one percent. This other way I can illustrate better if you call it a reduction of fifty percent instead of twenty-five percent.

Q. All right. Say the legislature cuts it fifty percent. Assuming you recognized the validity of doing that and proceeded to go on with your business.

2066 A. You say, assuming the validity of their doing that?

Q. Yes.

Mr. HAGERMAN: Under the testimony in the case, you can not, practically, reduce a single state rate without reducing an interstate rate.

The MASTER: Of course the question assumes that an equal amount of interstate business is done per the old rate?

General HADLEY: Yes.

A. In that new example you take the sum for twenty-two instead of twenty-one per cent.

Q. How do you get that figure?

A. You reduced your total to $4,500,000, and you find out what per cent one million is of that.

Q. Why don't you take the relation existing between state freight and all of the revenue and divide the expenses accordingly?

A. You can, but you have got to couple with it the fact that where at present it costs three times as much as the revenue proportion——

Q. Leave out the three-fold ratio.

A. You can not do it. You go to work and you say that under the present conditions, which we say are normal conditions, it costs three times as much as the revenue proportion to do the local business.

Now if you come along and arbitrarily cut that earning in two, it is not going to reduce the expenses, and the question at once becomes that it costs six times as much.

2067 Q. When I gave you the first example of five million dollars of revenue and four million dollars of expenses, you proceeded in a very cavalier manner to divide $4,000,000 of expenses in the relation of four-fifths and one-fifth.

A. Yes sir.

Q. Assuming you got your revenue from your freight business, $4,000,000 of interstate and $500,000 of state business, why wouldn't you divide your expenses in the same way?

A. I have made it clear to you. If the State of Missouri when it passed the law, reducing the rates, at the same time reduced the expenses, then you would proceed along those lines.

Q. But you do not answer my question.

A. Yes sir, I do. Your expert testimony is based on the condition as you believe they generally hold. Now you might take an extreme case, and say the State of Missouri wiped out entirely all the earnings on state business, and that they said to the road, "Here, the State has given you a charter and in return you go ahead and haul this freight and do not charge a cent for it." Don't you suppose the expenses would go ahead just the same?

Q. You wouldn't have any expenses to divide?

A. Did you think you could apply normal rules if you have abnormal conditions?

Q. Not if you take the revenue theory for division. It leads to absurd and foolish conclusions.

2068 But I ask you to make a division of the expense of doing state and interstate freight business upon the example I last gave you, and make it upon the same basis as the first one I gave you.

A. I say you have to take the two propositions together. In the first one, where on the basis of twenty percent it is coupled with the idea that the cost of doing that business is three times that twenty percent. Now to answer your second question, is a less percent say ten percent, and it costs six times as much to do the business.

Q. The logic of that is, that when you reduce the rates, you increase the amount of expenses that would be assigned to the doing of the State business?

A. As compared with interstate?

Q. Yes.

A. Exactly so.

Q. Take a case without reference to any other example I gave you or without reference to any reduction of rates: Say you are doing a certain amount of state and interstate business in the course of years, and as the result of it you earn $4,000,000 on interstate and

$500,000 on the state freight business. That you have $4,000,000 of expenses for the doing of all of that freight business. Then if you were dividing upon a revenue basis you would take one-ninth of the $4,000,000 as the expenses to be assigned to the state freight, wouldn't you?

A. The total is $4,500,000?

2069 Q. Yes.

A. I would take one-ninth. That would be correct.

Q. Now the road commences to figure around, and either by using the ton mile or the revenue basis of determining expenses it comes to the conclusion that it has not been charging enough on its state freight, and it decides to raise the rate fifty percent; and in the next year you do actually the same amount of business as you did the year before, and you have the same miles and you paid the same salaries and coal is the same, then you get one million dollars in revenue from state freight and four million dollars in revenue from your interstate freight business: Now how would you divide the $4,000,000 of expenses in that case, upon your revenue basis?

A. You have got to take the two figures into consideration in exactly the same way you did in the other example. Instead of one-ninth you have one-fifth, and that changes the multiple used.

Q. Although in both those cases you have the same number of miles and the same number of ton miles were hauled and the same salaries were paid to the conductors, brakemen, engineers, etc., and the same price was paid for coal, yet you assign a different amount of expenses in *one* the one case than in the other?

A. No sir, you do not, in your final assumption.

Q. Figure it if you can, on an increase of rates by which you receive instead of $500,000, $1,000,000, and you make an

2070 assignment upon the basis of the proportion of revenue, and you get the same amount of expenses, in the example I gave you.

A. The expense does not change at all. If you arbitrarily change the revenue it simply depends upon the relationship between the actual expenses and the revenue as changed, is all there is to it. Whether you raise it up or lower it down.

Q. If you are dividing the expenses upon a revenue basis, you must take the proportion between the revenue upon state and interstate——. Wait a moment.

You must take the proportion existing between revenue and state freight and revenue upon all freight business, if you adopt the revenue basis?

A. As the basis of your calculation, but the calculation is not conceded at that point.

Q. Work out a problem if you can, by which you have an increase in rate, by reason of which you get a larger amount of revenue upon state business, and a larger amount of revenue upon interstate business, and then divide the expenses upon the basis of revenue, and let me see you get the same amount assigned in each case to state freight business.

A. It depends entirely upon the multiple. You can not help

getting a correct result, if the Court wishes to take the time to work out the example. They are bound to work out the same result. That is a mathematical calculation. I could go ahead and work up some examples, if you wish.

Q. You think you could take the relation that existed between the state freight earnings and all of the earnings on the freight
2071 business in those two cases I have given you, and work out the same amount of expenses to be assigned to the doing of the state freight business, in each case, by taking the proportion in revenue?

A. Yes sir. The expenses are fixed. In order to work out your example, you must take a fixed expense, just as you did.

Q. We start out with $4,000,000 for the doing of all freight business in the State of Missouri in the year 1904. You do not know what proportion of the expenses to assign to doing state freight and what proportion of the expenses to assign to the doing of the interstate freight business. That is the question we have been trying here for two years, isn't it? If we knew what proportion to assign we probably would not have had a law suit. You say you want to divide it on the revenue basis and we say we want it divided on the ton mile basis.

A. We say the revenue basis is the uniform basis, as reflecting a great many conditions of different classes of traffic; and then we say when you get that revenue basis it reflects to some partial extent those distinctions, then you take and multiply by a certain figure in order to get the actual expenses.

Q. To get the increased expenses. But you must make the first apportionment between the revenue on state freight and the revenue on all freight.

A. Granting you that, but the multiple varies.

Q. That multiple varies according to the relation that exists between the state earnings and all the freight earnings, doesn't it?

2072 A. When an expert states that it is three times the cost as shown on a revenue basis, then he means that is his judgment on the normal conditions as they exist.

Now you can not take that multiple that he has given, as an expert, and apply it to radically changed conditions.

Q. Then you say the multiple would change according to the difference between the rate per ton mile on state freight and interstate freight?

A. In any particular case, you could divide the earnings by the ton miles and get a figure, undoubtedly.

Q. Are you now, Mr. Sturgis, in the closing hours of this case, injecting a new theory for the division of expenses, by saying that the revenue per ton per mile on state and interstate business must be practically on what are now normal conditions? Do I understand you correctly on that proposition?

A. I do not understand you, now.

Q. You state that you would have to take the multiple three or six, according to the relation existing between revenue on state and interstate business.

A. Not exactly six. I would have to vary the multiple from three.

Q. And why vary it?

A. On account of changed conditions.

Q. Then the question of rate per ton per mile on state business does enter your calculation in apportioning expenses: Is that so?

2073

A. No sir, not the rate per ton per mile used as a means of determining the dividing line in operating expenses, between State and interstate traffic.

Q. But as determining the revenue derived?

A. No sir, nor in determining the revenue derived.

Q. Why refer to it at all, then?

A. Because, I say if the rates are high or the rates are low, it will make a difference in the calculation.

Q. If you have high state rates and low interstate freight rates, you would use the multiple three; and if you had high state and high interstate rates, you would use the multiple six?

A. That conclusion is not warranted by anything I have said.

Q. What do you mean by saying that the revenue derived from state and interstate business enters into your calculation at all, into the question of the division on a revenue basis?

A. It is pretty hard to answer your question when you do not understand the distinctions I have made. I think I have made the point perfectly clear there.

Q. Didn't you say in answer to these twelve written questions I submitted to you on your second cross-examination in Chicago, that the question of revenue derived per ton per mile of state and interstate business did not affect in any way your apportionment of expenses between state and interstate business?

2074

The MASTER: I would not go over the re-examination.

Mr. HAGERMAN: Mr. Sturgis has testified time and again that he has not made any apportionment on the ton mile basis.

The MASTER: I think the cross-examination of this witness was so thorough and so extended, at Chicago, that we ought not cover the same ground again.

Mr. HADLEY: I am trying not to cover it. I do not remember with correctness what he said and I may not understand exactly what he is trying to say now.

The MASTER: I will direct counsel to endeavor to bring out only matters covered by the Exhibits filed by this witness yesterday. It has been gone over so thoroughly before that I do not think it is necessary to go over it again.

General HADLEY: Exhibit 55 is not really rebuttal, but is a recapitulation of his testimony in cchief. That is why it has made the scope of the cross-examination broader.

The MASTER: That is not substantive evidence but I think it is a very proper Exhibit, and I am very glad counsel filed it as he did; but in one way it is an epitome of the views he entertains on the whole case. It could hardly be called substantive evidence, in that view.

General HADLEY:

Q. In the division of expenses between state and interstate business on the basis of revenue, you do not, as I understand it, take into consideration the revenue per ton per mile derived from the doing of the state and of the interstate freight business?

2075 A. That is right. In making the division it does not cut any figure.

Q. Then I do not understand why it does not make any difference in your dividing the $4,000,000 of expenses, in the example I have given you?

A. I can not explain it other than I have stated already to-day in just reciting the method by which I would proceed. It is in the records.

Q. Let me ask you: I do not think you were asked the question. Mr. Hagerman suggested during the course of your cross examination that a change of the state freight rates of twenty-five percent would make a corresponding change in the interstate freight rates: Do you know anything about that proposition?

A. I know that when we were preparing Exhibit 1, that it was figured out in how far the interstate earnings would be affected by the change in the state rates, as required by the bill which is the basis for the suit. And we found that the effect on interstate rates and interstate earnings would be much in excess of the effect on state rates. That is, while we lost $170,000 on state earnings we would by this bill lose very much more on interstate earnings.

Q. And it was on that calculation that you made the statement in the case, one time, that the real basis of your suit was its effect on the interstate business?

A. I do not remember that I made such a statement.

Q. Isn't it a fact within your knowledge that most of

2076 your interstate rates are less than the sum of the locals?

A. Most of our interstate rates?

Q. Yes, less than the sum of the two state rates which are involved in the making up of that interstate rate.

A. That is my general understanding. As I have said all the way through this case, I am not and do not pretend to be an expert on rates.

Q. Didn't you find that the rate from Kansas City to Chicago was only twenty cents more than the rate *to* Kansas City to Hannibal?

A. I did not personally find that out. The computation in regard to the interstate rates was made under the supervision of Mr. Crosby, who designated just where the different interstate rates would be affected by this change of rates.

Q. Then if your understanding is correct, that the interstate rate is usually less than the sum of the locals, there could be a substantial reduction of the local rate without effecting necessarily a reduction of the interstate rates?

A. Where it did not affect the interstate rates it undoubtedly would not have been included by Mr. Crosby in the calculation.

Q. There is a large amount of business where I understand you would say that the interstate rate being less than the sum of the lo-

cals, there could be a reduction of the local rates without affecting the interstate rate.

A. My understanding would be the same as yours.

Q. Did you hear the testimony in this case that that
2077 would be true in Iowa where you had interstate rates that were more than the sum of the locals?

A. I do not remember the testimony and am very certain it was not my individual testimony.

Redirect examination.

By Mr. FRANK HAGERMAN:

Q. There is one place in Mr. Ludlam's testimony where he states or assumes, that Mr. Gray says that the terminal expense was eighty cents a ton: I wish you would turn to that and then give your opinion as to that?

A. As to his testimony? In answering that may I read from the testimony?

Q. Yes.

A. "Q. A witness testified in Chicago in this case, I believe it was Mr. Gray, that in his opinion, the terminal expense amounted to seventy eight cents and a fraction—we will say eighty cents so as to make it even—per ton, at each terminal."

Q. Yes.

A. Making approximately $1.60 a ton for each shipment.

Q. Can you tell me what the average revenue freight carried by all the railroads of the United States for the year ending June 30, 1904, was?

A. The Interstate Commerce Commission report shows that the amount received per ton on freight handled by all the railroads in the United States during the year ending June, 1904,
2078 amounted to $1.04.

Q. Per ton?

A. Yes sir, per ton.

Q. What is the average all over the country?

A. That is the average all over the country. All over the United States.

Q. Suppose there is only one terminal, how much would that be for all the terminal expenses, if the expense of one terminal was eighty cents?

A. None provided.

Q. How much would it provide for all other expenses?

A. Twenty-seven cents a ton, and the expense of two terminals, if they amounted to a dollar and sixty cents, would be fifty three cents more than they received, on the average, per ton for all the freight handled?"

Now I understand that is the matter that you wish me to answer?

Q. Yes.

A. I was very much surprised that an expert could make the statement he did, because it showed ignorance of the Interstate Commerce Commission's figures. He took and divided the earnings of

all the roads by the number of tons as reported by the Interstate Commerce Commission and shown in that body's report. He also states that he did it in that way.

Now railroad auditors all know, and I supposed Mr. Ludlam did, that each road reports the tonnage on its line. The same
2079 ton therefore, travelling from New York to San Francisco, is reported five or more different times. The New York Central reports it, the Lake Shore Reports it, the Burlington reports it, the Union Pacific reports it, the Southern Pacific reports it. If it goes to some point north of San Francisco another road reports it; and if it comes from a place outside of New York, another road reports it. Therefore, it would be five or seven times reported. Therefore the figures shown in the Interstate Commerce Commission's report is not counting that ton only once, but from once up to seven times. Therefore it is absolutely improper to divide the total earnings of the roads of all the country by the number of tons shown by the Interstate Commerce Commission's report, in order to arrive at the earnings per ton carried.

For instance, suppose it had all been reported five times, each ton, then instead of being one dollar and seven cents, which Mr. Ludlam gives as the average earnings per ton, it would be five times that.

General HADLEY:

Q. The average earnings or expenses?

A. The average earnings. I am talking about earnings. It would have been $5.35 instead of $1.07 a ton.

Now there is another point in connection with this testimony: It is stated in these questions and answers and assumed that Mr. Gray testified that the terminal expense for one terminal was eighty cents a ton on all freight.

Mr. HAGERMAN: That is what Mr. Ludlam assumes and
2080 applies it on that principle.

A. Mr. Gray did not testify to anything of the kind. His testimony is before the Court.

Q. What is the eighty cents applicable to?

A. He said the eighty cents was applicable to less than carload freight and he figured that on carload freight it was about only four cents. But in his testimony, Mr. Ludlam applies the eighty cents to all freight.

Q. And arrived at the revenue per ton upon the basis you speak of?

A. Yes sir. There are two serious errors in Mr. Ludlam's criticisms of Mr. Gray's testimony. In my judgment, Mr. Gray's testimony in regard to the cost of terminals is the best available that I have ever seen, and I know the Commission in the State of Wisconsin were very much impressed by it because two of the members told me it was the best they had ever seen.

General HADLEY: I object to that.

The MASTER: Yes sir, that is hearsay.

The MASTER:

Q. Is that Minnesota or Wisconsin?

A. Minnesota. It was important in connection with our Exhibit yesterday in which that question of terminal expense was referred to.

Mr. HAGERMAN:

Q. It has been said by you and also by Hamilton, that no account was kept of this revenue, or respecting shipments to and from the stockyards at Kansas City: Have you prepared as Ex-
2081 hibit 43 the statement that is contained in Exhibit 42, assuming that the $373,372.55 of the state live stock business in Missouri, you should say came to or went to Missouri points and the Kansas City stockyards, as to where your tabulation would lead you?

A. Yes sir, I made up a figure this morning.

Mr. HAGERMAN: I offer in evidence this statement as Complainants' Exhibit 42-a.

Complainants' Exhibit 42-a is in the words and figures following to-wit:

2082 Mr. HAGERMAN:

Q. Taking the figures on page 2 of this Exhibit, all the livestock revenue in the state, everything in the State, is $373,372.55, and that is shown by Exhibit 1, I believe.

A. Yes sir, on page 4.

Q. And that reduces the total state freight earnings from $1,649,-665.75 to what?

A. $1,276,293.20.

Q. And that reduces the revenue percentage as contained in Exhibit 42 from 13.11 percent to what?

A. To 10.14, which applied to the total expenses makes $819,-191.09.

Q. That leaves you with $457,102.11?

A. Yes sir, and applying the taxes and rentals with the same percent that applied to operating expenses, and deducting, we come down finally to $143,570.20, which, less the diminution——

Q. Upon all the commodities affected by the Act of 1905 except livestock, which of course is taken out there?

A. Yes sir, making a diminution of $30,819.43, and we arrive at the final residue of $112,750.77.

Q. Leaving the extra cost of doing the state business to be found and applied?

A. Yes sir, to be later determined.

Q. What would be the result applying now to that live stock revenue of the state, in the same way, and instead of taking the rentals as shown by item four, you simply take six percent interest upon the value of the property upon the basis
2083 that the assessment is made?

A. And using the percent we did on operating expenses?

Q. Yes.

A. We finally get a result of $136,430.63.
Q. In the neighborhood of $24,000 more than the $112,000?
A. Yes sir.

Mr. HAGERMAN: That is following a statement in Exhibit 42, simply showing what the result would be if all the livestock business had been interstate, because we have no way of separating it.

Recross-examination.

By General HADLEY:

Q. When did you go into the employ of the Burlington Railway Company?
A. My recollection is it was in July 1901, at the date of the lease.
Q. At the date of the lease: And that was the date of the organization of the railway company, wasn't it, or shortly before?
A. I don't know how long before; not very long before.
Q. The railway company had been in the business of operating a railroad before it took this property over under the lease?
A. No sir.

Questions by Mr. LADD:

Q. Perhaps you do not know it, but in the Missouri Pacific or the Wabash case, this matter of $1.07 was explained
2084 by Mr. Ludlam thoroughly:
Now I will ask you to look at page 99 of the statistics of the railroads of the United States for 1904, issued by the Interstate Commerce Commission, and see if they have not a table there which foots up $1.07 and a fraction, as the average revenue from each ton of freight carried?
A. That is based——
Q. I ask you if that table is not there and that footing in that book?
A. (After examining book:) The table is here but I deny its correctness and——
Q. Very well, that was not any calculation of Mr. Ludlam's but he took it from that book.

Mr. HAGERMAN: The point is, how the calculation was made.
Mr. LADD: But he says Mr. Ludlam made the calculation.

A. May I finish answering this question please?
Mr. Ludlam, as I understood, gave it as his figure; but I see here it is the same figure that appears in this report. But it is based on the tons hauled by the different roads, and it is so understood by railroad auditors, and I supposed Mr. Ludlam so understood it. This figure is not a correct figure to use, and should not have been used by Mr. Ludlam in a case of this kind, to show the average for the whole road for the whole country.
Mr. HAGERMAN: Whoever made it?
A. Yes sir.
2085 The MASTER: For the reason you stated a while ago, that it represented the identical tons hauled on a number of roads?

A. Yes sir. I was not only satisfied that I knew it, but I verified it through the Interstate Commerce Commission people themselves.

General HADLEY:

Q. Would not each road handling that ton of freight have its terminal expenses?

A. No sir, not in the same way at all. They might and they might not.

Q. If a ton of freight started at San Francisco and went to New York, and was handled by five different roads, would not each one of those roads have its terminal expense incident to the handling of that ton of freight?

A. Not the same as the start and finish.

Mr. HAGERMAN:

Q. Not the originating and terminating terminal expense.

General HADLEY:

Q. Would not each one of them have a terminal expense if connected with that freight?

A. Not in relation to the terminal expense as referred to by Mr. Gray's testimony.

Q. I am not asking you about Mr. Gray's testimony. I asked you if a ton of freight is started say at Los Angeles, the Santa Fe road turns it over at Chicago to the Lake Shore, has not the Santa Fe road had an expense and the Lake Shore has its expense?

A. It has *has* some expense, but not the figure that Mr.
2086 Gray quoted as the cost of the terminal.

Q. I have not asked you anything about Mr. Gray. I was asking you about this.

A. But I must not let my answer appear contradictory to what I testified before.

Q. If each of these roads have their terminal expenses incident to the handling of that car of freight, and if a joint tariff extends from Los Angeles to New York, does not that joint tariff provide for the payment of the terminal expenses of those lines?

A. I fail to see any bearing between the joint tariff and the terminal expenses, in the particular case you are talking of.

Q. My point is, if a load of freight is handled by five different roads, there is the expense of five different terminals: There is also a charge made by five different roads to cover those five expenses: Isn't that so?

A. Presumably, the earnings at least partially cover the expenses. My judgment is it does not in all cases, as I have stated in this case, on short haul state freight. And yet, we must not suppose that if for instance it goes through in a solid car from Omaha over the Union Pacific and the Southern Pacific, a whole carload of less than carload stuff goes through in a solid shipment from Omaha to San Francisco, there is not any eighty cents a ton expense incident to that at Ogden, which is the point of junction between those two roads.

Q. (Previous question read to witness.)

2087 A. Now that I have explained the bearing of the answer to this question on the interstate, and Mr. Gray's figures, I can answer, yes.

Questions by Mr. LADD:

Q. But I understood you to say in answer to question by Mr. Hagerman, that instead of the average revenue from each ton of freight carried being $1.07, as shown by this Interstate Commerce Commission's report, it would be five times that?

A. No sir, I did not say that. I said if for example it had to travel over five different roads, then it would be. I said it would vary all the way from one to five, six, or seven times.

Q. You had not said, then, it would be five times?

A. No sir, I took that as an example. For instance, if it went over five roads, it would be five times.

Q. Please look at page 73 of this report, "Summary of freight tariff, freight traffic, movements for the year ending June 30, 1904, in the United States" in one column, against the number of tons originating on the road. What is that, 641,680,547, isn't it?

A. Correct.

Q. And the next column, "Tonnage received from connecting carriers, 534,924,172"?

A. That is correct.

2088 Q. So it could not possibly be twice as much, could it, because the tonnage received from other roads is not as great as the tonnage on the originating roads: Isn't that right?

A. That appears to be a correct interpretation of this table. But, as a matter of fact, that tonnage revenue on the road is not in my judgment correct, from what I know about the way those figures are made up.

Q. Assuming those figures are correct, that is the proper interpretation?

A. That it would not be on the whole an average of twice?

Q. Yes.

A. Yes sir, that is the way I look at it now, without more study. But I would like to qualify that answer.

I am satisfied that at a point like Chicago, for instance, and a point like St. Louis, where there is a great deal of so-called "re-billing", that is, the same way-bill does not follow through from the lines east of St. Louis and Chicago to the lines west, that the last roads would count that as freight originating on their road, because they count the bills they make, though as a matter of fact, the freight originated on another road. That is, I think the figures in the first column are too high.

Q. You know, as a matter of fact, from your railroad experience, that these figures are made up from figures and reports transmitted to the Commission from the railroads themselves?

A. Yes sir.

The MASTER:

2089 Q. Do you know, as a matter of fact, that the railroad whose duty it is to make these reports to the Interstate Commerce Commission did treat freight as original freight when

it is rebilled, notwithstanding it may have been delivered to them from a connecting carrier?

A. I can say practically, I do know it, because I have heard so much discussion on the subject and that figure on that page does not include a single figure from the Burlingon, nor a good many figures from other roads.

Mr. LADD:

Q. Don't you make reports to the Interstate Commerce Commission?

A. Yes sir, but we have not made that report to them. We said it was very burdensome and not at all satisfactory.

Mr. LADD:

Q. I want to ask you about Exhibit 42-*a*, in paragraph "*b*": You assume that all shipments were to and from Kansas City?

A. Yes sir, we assumed.

Q. Your road shipped a great deal into St. Joe?

A. Yes sir.

Q. Why did you state this?

A. It is merely what it states.

Mr. HAGERMAN: It is simply a very extreme case.

A. You see St. Louis has its stockyards in East St. Louis, so Kansas City and St. Joe are the only points.

Mr. LADD:

Q. Does not your road do a much larger livestock business into, and out of, St. Joe than into and out of Kansas City?

A. I don't think so. I have not the figures here to show.

Plaintiff here rests in rebuttal.

2090 As supplementary to the testimony of C. S. Ludlam given in the Missouri Pacific Railway Company's case, and offered by the complainant in this case, the defendants offer in this case certain other parts of the testimony of said Ludlam given in the Missouri Pacific Railway Company's case, as follows:

All that part of page 3940 beginning with the words: "I want to offer".

Page 3941.

Page 3942 to third answer on page 3994.

Page 4106, first answer to last answer on page 4115.

Page 4146 to last answer on page 4153.

From the last question on page 4159 to the first answer on page 4175, both inclusive.

From the first question on page 4179 to the second answer on page 4181, both inclusive.

From the fifth question on page 4218 to the sixth answer on page 4218, both inclusive.

From the fourth question on page 4247 to the second answer on page 4251, both inclusive.

From the last question on page 4255 to the fourth answer on page 4256, both inclusive.

From the first question on page 4265 to the first answer on page 4271, both inclusive.

From the first question on page 4287 to the first answer on page 4289, both inclusive.

2091 From the first question on page 4307 to the last answer on page 4313, both inclusive.

The first question on page 4309 and the answer to it.

The second question on page 4315 to the fourth answer on page 4317, both inclusive.

The first question on page 4319 to the third answer on page 4325, both inclusive.

The second question on page 4333 to the first answer on page 4337, both inclusive.

Page 4339 to the fourth answer on page 4341, both inclusive.

The second question on page 4346 and the answer to it.

The first and second question on page 4347 and their answers.

The second question on page 4349 to the last answer on page 4349, both inclusive.

The fifth question on page 4350 to the third answer on page 4351.

The last question on page 4442 to the first answer on page 4444.

The last question on page 4455 to the second answer on page 4456, both inclusive.

The first question on page 4457 and its answer.

The first question on page 4479 to the last answer on page 4486, both inclusive.

The last question on page 4551 to the last answer on page 4552.

2092 The portions of the testimony of C. S. Ludlam given in the Missouri Pacific Case, and offered as above by Counsel for Plaintiff and Defendants, are in words and figures as follows, to-wit:

2093 Mr. LADD: I want to offer in evidence a couple of printed sheets which have been referred to frequently in the testimony for the Complainant. On the form No. 1940, sheet No. 2, purporting to be an analysis of statement of Superintendent's operations for the month of June, 1906, and 1905, and for the period from July 1, 1905, to June, 1906, compared with the same period of the previous year.

I will offer in evidence this paper as Defendant's Exhibit 26.

The papers marked Defendant's Exhibit 26 *is* in the words and figures following, to-wit:

2094 MR. LADD: I will offer in evidence as Exhibit 27, another sheet which has been referred to, being form No. 1941, sheet No. 7, with the same heading as the other paper which has been marked Exhibit 26.

The paper referred to is marked Defendant's Exhibit 27.

Defendant's Exhibit 27 is in the words and figures following, to-wit:

2095 The MASTER: Exhibit- 26 and 27 are original sheets, to be returned to the Missouri Pacific Railway Company by the defendant, and copies thereof to be filed as the exhibits.

Mr. LADD:

Q. Will you please look at Exhibit 26, which is Form 1940, sheet 2, which was just offered in evidence, and state what appears from that to be the average cost per ton on the Missouri Pacific Railway system for their station and yard service?

A. The average cost per ton, including company material, for station and yard service, for the year ending June 30, 1906, is shown by Exhibit 26 to be 17.92 cents.

Q. Does that Exhibit or Exhibit 27 show what is included in station and yard service, in the method of keeping the accounts of the Railway Company?

A. Yes sir. Exhibit 27, which is sheet 7 of form 1941, shows that station service includes: Office force, platform foremen and clerks; platform labor; other labor; storage; station supplies; and telegraph and telephone expense;

And that yard service includes supervision, yard men, yard engine men and firemen, and oil and fuel for yard locomotives.

Q. In those items of expense which you have just enumerated under the head of "station and yard service" is or is not the entire operating expense of the terminals included?

A. Yes sir, the entire operating expense of the terminals is included, with the exception of the maintenance and repairs
2096 of the terminals, which would be charged to maintenance of way and structures.

Q. How would it be about maintenance of equipment, in the locomotives that are used in the terminals?

A. That would also be charged to maintenance of equipment, and not be included in the items station service and yard service.

Q. So with these two exceptions, maintenance of the yard and its tracks, and any structures which may be in the yard, which are accounted for in expenses under the head of "maintenance of way and structures"; and the maintenance of the locomotives, which comes under the head of "maintenance of equipment" the entire terminal expense is included, is it?

A. Yes sir.

Q. Have you prepared a statement starting with that item of expense, which makes an estimate of the cost per ton of handling State freight and inter-state freight?

A. Yes sir, I have prepared two exhibits; One showing the cost per ton of the inter-state; and one showing the cost per ton of the State freight.

Mr. LADD: I will offer in evidence this statement as Defendant's Exhibit 28.

The paper marked Defendant's Exhibit 28 is in the words and figures following, to-wit:

2097 Q. Have you prepared an estimate of the cost of handling the State freight also?

A. Yes sir.

Mr. LADD: I will offer in evidence this paper as Defendant's Exhibit 29.

The paper marked Defendant's Exhibit 29 is in the words and figures following, to-wit:

2098 Mr. LADD:

Q. Referring now to your Exhibit 28, purporting to be a statement showing the cost per ton for handling inter-state freight: These are estimates of the cost of doing the State and inter-state business of the Missouri Pacific Railway Company in Missouri, aren't they?

A. Yes sir, based upon the operations of the system.

Q. Take your first column, under the head of "single cost": Now your 17.92 cents you take from the cost per ton for station and yard service from Form 1940, did you?

A. Yes sir.

Q. The figure under that for train service is 4 cents and a little over 3/10 of a cent. I wish you would tell the Court how you arrive at that estimate.

A. Exhibit 27 shows——

Q. That is Form 1941?

A. Yes sir, Form 1941, Exhibit 27, shows that the cost for train service for the Missouri Pacific System for the year ending June 30, 1906, amounted to 4.1 cents per 100 ton miles.

Now the average haul of inter-state freight in the State of Missouri, as shown by exhibit 19, was 105 miles.

Q. What is Exhibit 19?

A. Exhibit 19 is a statement of the freight handled on the Missouri Pacific Railway in Missouri during the month of October 1905.

Mr. HAGERMAN:

Q. That is, that 105 miles average haul is the one you have shown on Exhibit 19?

2099 A. Yes sir.

Q. And how do you get the 105, the number of tons one mile entered into that same way: You divided that by something else to get your 105?

A. The average haul of 105 miles for inter-state freight, is shown in column 9 of Exhibit 19. That is arrived at by dividing the total ton miles shown by column 6, by the number of tons shown in column 1.

Mr. LADD:

Q. Exhibit 19 you have been referring to is one which has already been offered in evidence by the Defendant?

A. Yes sir.

Q. Proceed with that explanation of the second item of cost.

A. Exhibit 19 shows that the inter-state freight moved on the average 105 miles. If it costs 4.1 cents to haul a ton 100 miles, it would cost 4.305 cents to haul one ton 105 miles.

Q. Proceed with the next item as to the engine service, and tell how that was arrived at.

A. Form 1941, Exhibit 27, shows that the cost of engine service per 100 tons one mile, during the year ending June 30, 1906, amounted to 9 cents. If it costs 9 cents for engine service for each ton hauled 100 miles, it would cost 9.45 cents to haul a ton 105 miles.

Q. Now proceed down the list and state as briefly as you can how you arrived at your figures.

2100 What do you mean by "C. T. expenses"?

A. The next item shown on Exhibit 28 "Other C. T." means other expenses of conducting transportation operating expenses, not included in station service, yard service and engine service.

It is shown by Exhibit 27, which is Form 1941, to amount to 4.24 cents for each ton 100 miles.

If it costs 4.24 cents for one ton 100 miles, it would cost 4.452 cents for one ton 105 miles.

Mr. HAGERMAN:

Q. Wherever you use the initials C. T. it means conducting transportation?

A. Yes, sir, on this exhibit.

The next item on Exhibit 28 is "expense of traffic service" which is shown by Form 1941 to be 1.32 cents for each ton moved 100 miles. This reduced to 105 miles, the average haul of inter-state freight in Missouri, as shown by Exhibit 19, would make the charge for conducting transportation traffic expenses 1.386 cents.

That would make the total conducting transportation expenses, as shown by Exhibit 28, 37.513 cents for each ton of inter-state freight handled by the Missouri Pacific Railway in the State of Missouri, based on the average of 105 miles, which Exhibit 19 shows was the average haul of inter-state freight.

Q. Proceed. What does "M. W. S." mean?

A. Maintenance of way and structures, are shown by Exhibit 28, to amount to 7.11 cents for each ton 100 miles.

2101 Mr. HAGERMAN:

Q. This Form 1941 has three things: Train mile in cents, car miles in cents, and 100 ton miles in cents: And your computation is made on the basis of the 100 ton miles in cents?

A. Yes sir.

Q. Did you make any computation on the basis of train or car miles?

A. No sir, we had not any statistics in regard to that. We could not divide tonnage between train mileage and car mileage, as between inter-state and State. But we can divide the ton mile, because we know how many miles the State and inter-state freight moved.

Mr. LADD:

Q. Proceed with your explanation.

A. This Form 1941 shows maintenance of way and structures expenses during the year ending June 30, 1906, to have been 7.11 cents for each ton 100 miles.

If the maintenance of way and structure expenses were 7.11 cents for one ton 100 miles, they would be 7.465 cents for one ton 105 miles.

The next item "M. B. expenses" means maintenance of equipment expenses, and these expenses are shown by Form 1941 to have amounted to 9.84 cents per ton per 100 miles, during the year ending June 30, 1904. And if it costs 9.84 cents to haul one ton 100 miles, it would cost 10.332 cents to haul one ton 105 miles.

The next item on Exhibit 28 "general expenses" is shown by Exhibit 27, being Form 1941, to have cost the company
2102 during the year ending June 30, 1906, 2.51 cents for each ton 100 miles. If it costs 2.51 cents for one ton 100 miles, then it would cost 2.636 cents for one ton 105 miles.

Adding all these figures together, that is the total for conducting transportation, maintenance of way and structures expense, maintenance of equipment expense, and general expenses, gives us a total cost per ton of 57.946 cents.

Mr. HAGERMAN:

Q. What does that mean? The cost of moving one ton a mile?

A. It means the cost of moving one ton 105 miles, which is the average haul of interstate freight, as shown by Exhibit 19.

Q. That is, one ton 105 miles?

A. Yes sir.

Q. Your next statement there on this exhibit is the average amount received per ton for each ton of interstate freight, as shown by Exhibit 19: How much is that?

A. 82.2 cents per ton.

Q. That is the Exhibit showing the operations of the Company for the month of October, 1905, Exhibit 19, is it?

A. Yes sir.

Q. Upon that basis what is the ratio of cost to earnings on the interstate traffic in Missouri?

A. 70.49 per cent.

The usual hour having arrived, recess was here taken until two o'clock P. M.

2103 After recess on Wednesday, February 6, 1907, the following proceedings were had:

Direct examination of C. S. LUDLAM, continued as follows:

By Mr. S. B. LADD:

Q. Take, if you please, Exhibit 28, Mr. Ludlam: Now this is an estimate of the cost per ton for handling State freight in Missouri, with a basis to begin with of the cost for stations and yard service,

as shown in form 1940, being the same basis for the computation in the beginning of Exhibit 28P. That is right, isn't it?

A. Yes sir.

Q. In the first column you allow 17.92 cents for station and yard service. That is on the basis of its costing the same for that service that the average ton costs on the whole system: That is right, isn't it?

A. Yes sir, it is based upon the same cost per ton, irrespective of the fact that the State freight is hauled a shorter distance than the inter-state, and therefore, would have less use of the terminals than the inter-state freight.

Q. I notice on that first line some abbreviations in parentheses: What did they mean?

A. "Including Company material."

Q. In this first column you assume that the average cost per ton for station and yard service, on the State freight handled in Missouri, is 17.92 cents?

A. Yes sir.

Q. That is the same amount as shown by Form 1940, that
2104 the average cost per ton for that service on the entire Missouri system, which includes not only what we understand as the Missouri Pacific Railway, but the Iron Mountain Railroad and the Central Branch?

A. Yes sir.

Q. I will get you to say, before we go any further, whether you think 17.92 cents, in your opinion, is the cost for station and yard service on State freight in Missouri—is that, *or* less, or more than that?

A. I don't think that the station and yard service per ton on State freight in Missouri would amount to anything like as much as the average per ton for the entire system; for the reason, that the average ton of State freight in Missouri moves only 52 miles, which on the average would give it only an originating and terminating terminal; whereas, all the freight on the system moves an average of 222 miles, which would give it an originating and terminating terminal, and probably two intermediate terminals.

So that the system expense for terminals would be a good deal higher than the State expense for terminals.

Q. There are two terminals in the case of State freight?

A. On the average, where the freight moves 52 miles, there would be only the two terminals, the originating and the terminating terminal.

Q. You say that the average haul of freight on the Missouri Pacific system is 222 miles: Where did you get that information?

A. I got that from the Annual Report of the Company,
2105 on page 48. It shows that all the freight handled by the system, including revenue freight and company freight, moves on the average 222 miles.

The revenue freight moved 237 miles, and as this State freight, as shown by Exhibit 19, is State revenue freight only, it would be probably fairer to compare the 52 mile haul of State freight with the 237 mile haul of all freight on the system. Therefore, there

would be the two terminal expenses on the State freight as against the 237 miles haul on the system.

Q. You say there are two terminals on the State haul of 52 miles?

A. Yes sir, on the average.

Q. You mean to say there are, in your opinion, more than two terminals on the haul of 222 miles of 237 miles?

A. Yes sir.

Q. How do you make that out?

A. Because the average freight division is about 100 miles, and there is not freight that passes over a divisional point without there being some terminal expense incurred.

Q. Does that assume that all this freight on the system, whose average expense is 17.92 cents, has its place of origin and place of destination on the system?

A. The freight itself may not have originated or terminated on the system.

Q. Suppose it did not either originate or terminate on the system, then that terminal expense at the point of origin or at the
2106 point of destination would not be a terminal expense, would it?

A. Each ton of freight handled by the Missouri Pacific Railroad Company must have a point of origin on the system and a point of termination on the system, whether that is the point of origin or the point of destination of the freight, or not. And that terminal expense, where the freight originates on the system, would be almost the same whether the freight itself originated there or originated beyond that point.

Q. You take the case of some freight coming say from Cincinnati, east of the river, where the Missouri Pacific Railway does not reach, for a point on the system west of St. Louis: Now the point of origin of that freight is not on the system?

A. No sir.

Q. That terminal expense at that point of origin, say Cincinnati, is not incurred by the system?

A. The Cincinnati terminal, of course, is not incurred by the system. But the point I make is that the terminal expense of the system, where it receives that freight at St. Louis, is as great to the system as it would be if the freight originated at St. Louis, or almost as great. There might be a very slight difference.

I would explain it by saying the getting out of an empty car for loading. But if the car was loaded it would not cost the Missouri Pacific any more to haul it from one of its industrial tracks in the City of St. Louis than it would to haul it from the connecting tracks of the line from which it received the freight. And, prob-
2107 ably, that expense would not be as great to the company in the case of the freight originating at St. Louis as in the case of the freight originating east. For the reason, that those cars from the east would be delivered to the company in lots of 10, 20 or 30, and they would have to be switched, those 10, 20 or 30 cars, all around to different parts of their yards, to distribute them to their different trains. Whereas, if they took one car off an industrial

track they could put it right into the train on which they wanted it to go out.

Q. The substance of it is this: That in your opinion the expense at St. Louis to the Missouri Pacific Railway, connected with a carload of freight delivered to it by a connecting line east of the river, is as great or nearly as great as the expense to the Missouri Pacific Railway Company at St. Louis, in the case of a carload of freight loaded at St. Louis?

A. Yes sir, that is exactly what I mean.

Q. Now take less than carload freight: Now would the expense of handling less than carload freight at St. Louis, received from a connecting line at St. Louis, compare with the expense of handling less than carload freight whose origin was St. Louis?

A. I think the expense to the company in handling the less than carload freight which was received from connecting lines would be greater than the expense of less than carload freight that originated at St. Louis.

Q. Why?

2108 A. Because there would be an additional handling, as a general proposition. The less than carload freight delivered by connecting lines would have to be unloaded from the car in which it was received, and then reloaded into the Missouri Pacific car on which it was forwarded out of St. Louis.

Whereas, in the case of freight that originated at St. Louis, there would be merely the loading into the car on which it was forwarded out of St. Louis.

Q. There is an additional unloading?

A. Yes sir, a large part of it.

Q. I do not think you explained yet: You said awhile ago there were two terminals in the case of purely State freight, and you thought in the haul of 222 miles or the haul of 237 miles, as the case might be, there would be more than two terminals: Now you explained that by saying that there would be a division point in the course of that haul, where there would have to be some attention paid to the freight?

A. Yes sir, one or two division points.

Q. Do you mean to say that at each of these division points it would be equivalent to a full terminal expense at the point of origin or at the point of destination?

A. No sir. The intermediate terminal expense would be much less than the terminal expense at the point of origin or at the point of destination.

Q. But you think on the long haul of 222 miles or 237 miles, whether it be State or interstate freight, there is more than the equivalent of two terminals?

A. Yes sir.

Q. While on a haul of 52 miles, usually there would be

2109 only two terminals: Is that right?

A. Yes sir.

Q. At the point of origin and at the point of destination?

A. Yes sir, that is right, exactly.

I might illustrate by saying that on a carload of freight originating at Jefferson City and going to Sedalia, on the Missouri Pacific Railway, there would be only the originating and terminating terminal. But on a carload of freight originating at St. Louis, Missouri, on the Missouri Pacific Railway and going to Pueblo on the Missouri Pacific, there would be a great many intermediate terminals, the distance being 900 miles there would be probably six or seven intermediate terminals.

In the case of that car the intermediate terminal expense would probably be as great as the terminal expense at the point of origin and destination.

Q. That causes the expense, if there is any, at what you call the intermediate terminals? You do not mean to say the freight is unloaded from one car and loaded into another?

A. Oh, no.

Q. What is it?

A. The expense is the use of the terminals which is made by the through business. At each of these terminals that car would receive some attention. Some of the time of the yard men would be given to inspecting that car. The car would be switched from one
2110 train to another. There is always a constant shifting of cars on all trains they pull into terminals.

Q. The train on which that car started out might be partially broken up, the cars separated, going to different points?

A. It probably would be.

Q. And that would be at one of these intermediate terminals?

A. At almost every one of those intermediate terminals the trains are partly, at least broken up. Very few trains go right straight through. Most of the trains are more or less broken up at the intermediate terminals.

Q. The amount is 17.92 cents per ton?

A. Yes sir.

Q. Not per ton mile?

A. No sir.

Q. That 17.92 cents per ton is the cost, irrespective of the length of the haul?

A. Yes sir.

Q. If 17.92 cents is the cost per ton, not per ton mile?

A. That is the cost per ton.

Q. That is the cost which you have fixed here, irrespective of the length of the haul?

A. Yes sir.

Q. Look at Exhibit 29; and state if in the first column that assumes to be the cost per ton. What does that mean? upon a haul of 52 miles, the average haul of the State freight as com-
2111 pared with a haul of 105 miles, the average haul of the interstate freight?

A. It means that if it is reduced to a per ton per mile basis, we have charged the State freight twice as much per ton per mile as we have the interstate, for terminal expense.

Q. That is, is it, because the haul is twice as long in the case of

the interstate freight as it is in the case of the State freight, and you have charged the State freight the same cost per ton: Is that right?

A. Yes sir.

Q. So it amounts in a comparison with the cost of the interstate freight 17.92 cents, it means twice 17.92 relatively?

A. Relatively per ton per mile.

Q. Take the first column of figures in Exhibit 29, "Train service:" The figure 2.132 cents, how do you reach that?

A. The cost of train service is shown by Exhibit 27, which is Form 1941, to be 4.1 cents per ton per 100 miles. If it costs 4.1 cents for one ton 100 miles, it would cost 2.132 cents for one ton 52 miles, 52 miles being the average haul of State freight in the State of Missouri, as shown by Exhibit 19.

Q. That is to say, the cost of hauling a ton of State freight is two cents and a fraction as against four cents and a fraction for interstate freight, because the haul of the State freight is 52
2112 miles whereas the haul of the interstate freight is 105 miles: Is that it?

A. Yes sir.

Q. Take engine service 4.68 cents: do you reach that in the same way?

A. Yes sir, using as our basis of cost the figures 9 cts. as the cost of engine service per 100 ton miles.

Q. "Other conducting transportation expenses:" Is that reached in the same way?

A. Yes sir.

Q. And "conducting transportation traffic expense:" 6/86 miles: Is that reached in the same way?

A. Yes sir.

Q. What is the total for conducting transportation?

A. 27.623 cents per ton.

Q. Your next item is "maintenance of way and structures:" Is your 3.7 cents reached in the same way?

A. Yes sir.

Q. And your item of maintenance of equipment 5.117: Is that reached in the same way?

A. Yes sir.

2113 Q. And the item of "General Expenses," 1.3 cents, in the same way?

A. Yes sir.

Q. What is the total expense per ton, on that basis?

A. 37.745 cents.

Q. What was the average amount received per ton for each ton of State freight, as shown by your examination of the business on the company for October, 1905, as represented in your Exhibit 19?

A. 86.63 cents.

Q. According to that, what is the percentage of cost to revenue on the state freight?

A. 43.57 per cent.

Q. Take your second column on Exhibit 29, what are the as-

sumptions there as to the difference of cost in any of the items of expense?

A. The figures in the second column are prepared upon the assumption that the train service costs twice as much per ton per mile as the average cost per ton per mile of all the train service of the Missouri Pacific system, as shown by Form 1941. And that the engine service costs twice as much per ton per mile as the engine service of the system costs, as shown by Form 1941.

Q. Is that for the system or interstate in Missouri?

A. On the interstate in Missouri.

Q. Which is right? I see it is headed that way?

A. Missouri is correct.

Q. Interstate in Missouri?

A. Yes sir, interstate in Missouri.

2114 Mr. HAGERMAN:

Q. Let me see if I understand what is meant by that: This second column of Exhibit 29 is compiled upon the theory that so far as engine service is concerned it costs twice as much as is shown on this Form 1941?

A. Based upon Missouri mileage.

Q. But you have headed it "Twice as great on State as on Interstate per ton per mile"?

A. In Missouri.

Q. How do you do the example, is what I would like to see: do you start with your original figure, the cost as shown by Form 1941?

A. Yes sir.

Q. And then you multiply that by two?

A. I applied that to the state of Missouri, and then we had the proportion of the total tonnage, which is State freight in Missouri, and multiplied that by two.

Mr. LADD:

Q. Look back to your Exhibit 28: how did you reach in your first column, the cost per ton of handling interstate freight in Missouri, 4 cents plus?

A. We took the cost for hauling one ton 100 miles, as shown by the Company's form 1941, and that being the cost for 100 miles we divided that by 100, and multiplied it by 105, the haul in Missouri being 105 miles.

Q. The average cost per ton for 100 tons one mile, that is one ton 100 miles—that is all the same thing, isn't it?

A. Yes.

Q. On the entire system, the average cost per ton for 100 tons one mile is 4.1 cents?

A. Yes sir.

2115 Q. But the haul on the interstate freight in Missouri being 105 miles instead of 100 miles, that 4.1 cents becomes what for the interstate freight in Missouri?

A. 4.305 cents.

Q. A little more than the average on the whole system?

A. Yes sir; it costs a little more to haul it 105 miles, than the average cost for 100 miles.

Q. Now take your second column, and the second figure in it, in your Exhibit 29: How do you reach your cost of train service on state freight, of three cents and a fraction, instead of four cents and a fraction on interstate freight?

A. Our of each 100 ton miles freight *was* moved in Missouri, fourteen miles represented State freight, and 86 miles represented interstate freight. We doubled the mileage representing the state milage in Missouri, and got our unit on that basis.

Mr. HAGERMAN:

Q. Where did you get your 96.14?

A. On Exhibit 19.

Mr. LADD:

Q. I wish you would take the figures and work it out. How do you reach that 3.734 cents?

The MASTER: How did he reach the 17.92?

Mr. LADD: That is the average cost for station and yard service. That remains the same.

The MASTER: It is in a column that purports to be multiplied by two.

Mr. LADD:

Q. Explain how you reach that 3.734 cents?

A. The cost for train service on the system being 4.1 cents for 100 ton miles, and the division between the total ton miles
2116 in the State of Missouri being 14 ton miles of state freight to 86 ton miles of interstate freight, as shown by Exhibit 19, we put down the ton miles of the interstate freight, which is 86; then take the State ton miles, 14; and for the purpose of finding out what that would cost, if it costs twice as much, we multiply the 14 by 2, which gives 28. Add that 28 to the 86, which gives us 114 miles. We divide that 114 into the cost, 4.1 cents, to get our common unit, which gives us a result of 3.59, which is the per ton per mile of the interstate, or the common unit. We apply that common unit to the interstate.

The state freight, costing twice as much per ton per mile, we multiply that 3.59 by 2, which gives us 7.18, as the cost of the state freight, as compared with 3.59, the cost of the interstate freight.

We take the 7.18, in the case of the State freight, and multiply it by 52, that being the average haul of the state freight in the State of Missouri, as shown by Exhibit 19. 7.18 multiplied by 52 gives us 3.734 cents, which would be the cost of the train service for the State freight, if it costs twice as much per ton per mile as the interstate.

To determine the cost of hauling a ton of interstate freight 105 miles, we go back to the common unit of 3.59 previously established, and multiply that by 105 miles, that being the average haul of the interstate freight in the State of Missouri, as shown by Exhibit 19.

That gives us 359 times 105, which equals 3.769 cents, which is the cost of the engine service for hauling a ton of freight 105 miles, assuming that the state freight costs twice as much as the interstate.

2117 Q. That 3.769 cents appears on Exhibit 28 in the second column, does it?

A. Yes sir.

Q. As the cost of the train service on interstate freight in Missouri per ton? Is that right

A. After doubling——

Q. Upon the theory that the train service on the State freight costs twice as much per ton as it does on the interstate freight?

A. Per ton per mile; yes sir.

Q. So the result of that, assuming the cost of the train service per ton per mile on the state freight is twice as much as it is on the interstate freight, it would leave the cost of interstate freight 3.769 cents per 105 ton miles, and the state freight 3.734 cents, as shown on Exhibit 29: Is that right?

A. Yes sir, it would leave the cost of the train service for hauling interstate freight 105 miles 3.769 cents as compared with the cost of train service for hauling a ton of state freight 52 miles, 3.734 cents.

Q. These figures are the cost per ton, and not per ton mile; is that right?

A. Yes sir.

Mr. HAGERMAN:

Q. Comparing the two, although it costs twice as much to do the state as the interstate traffic, the cost is 3.769 cents in the case of the interstate, as against 3.734 cents in the state traffic?

A. Yes sir; because the haul of the interstate traffic is more than twice as long as the haul of the state traffic;

2118 Q. And yet the result is, you brought it down to the basis of the ton mile, the actual cost of handling a ton?

A. Yes sir.

Q. So as to correspond with and offset Column 5 of your Exhibit 19, where you receive 82.2 cents per ton for interstate and 86.63 cents for state freight?

A. Yes sir.

Mr. LADD:

Q. Although this Column 2 in Exhibit 29 purports to be made on the assumption that the train service costs twice as much on state as on interstate freight, per ton per mile, the fact that the figures in that column 3.734 cents, are not twice the corresponding figures in Exhibit 28, referring to interstate freight, 3.769 cents, is because the mileage of the state freight is only 52 miles while the interstate freight is 105 miles; is that it?

A. Yes sir.

A. It is really twice as much when you come to consider the difference in mileage, is it?

A. It is exactly twice as much per ton per mile.

Q. What is included in Train Service, according to this Form 1941?

A. Exhibit 27, being Form 1941, shows that train service includes, train-men-regular time; train-men-over and constructive time; oiling cars and other supplies.

Q. Now, while you are at it, will you state what Engine Service, according to that form 1941, includes?

A. Engine service includes: engineers and firemen—regular time; engineers and firemen—over and constructive time; engineers and firemen—helping service; fuel for locomotives (in-
2119 cludes cost of handling); water supply for locomotives; stores for locomotives (lubrication, etc.); other supplies for locomotives (sand, tools, inspection); and engine-house-men.

Q. In this second column of Exhibit 29, upon the assumption that the engine service costs twice as much per ton per mile on state as on interstate traffic, you fix the cost per ton at 8.206 cents: is that result reached in the same way as with the figures concerning train service?

A. Yes sir.

Q. The same method was pursued?

A. Yes sir.

Q. I think all the other figures except the totals and percentages in that second column, are exactly as they are in the first column: is that right?

A. Yes sir, all except train service and engine service.

Q. Does that allow any extra cost to be charged to the state traffic on account of maintenance of way and structure, maintenance of equipment, general expenses, and certain items included under "Other conducting transportation expenses"?

A. No sir, it does not.

Q. In your third column is a showing upon the basis that the train and engine service for the state traffic costs three times as much per ton mile as on interstate, and the figures 4.992 and 10.967 cents, are reached by the same method you have described in relation to the train service, are they? That is, using three instead of two as the multiple?

A. Yes sir, multiplying the proportion of ton miles represented by the state business by three.

2120 Q. Suppose the cost were as shown in your second column, what would be the ratio of expense to earnings?

A. On state business, 49.49 per cent.

Q. And in your third column, assuming the train and engine service cost three times as much per ton per mile, what would be the ratio of expense to earnings, in that case?

A. 54.13 per cent.

May I go back to that matter of multiplication for a moment?

Q. Yes.

A. I want to say that if you took the total charge to train service per ton under this column where it is shown as twice, and divided it by 52, which is the average haul, that would give you

the cost per ton per mile. Then, if you took the corresponding figure on the interstate, 3.769, and divided it by 105, that would give you the average cost per ton per mile used here on the interstate. And that deduction would show that the cost per ton per mile was twice as much in the case of state as in the case of interstate traffic. That would be a simple method of proving that this cost is double per ton per mile.

And the same remarks would apply to Column 3, if you use the multiple three instead of the multiple two.

Mr. HAGERMAN:

Q. Would it apply to each place where you have made a difference in the increased cost?

A. Yes sir. I might explain that whole thing by a very simple illustration.

Mr. LADD:

Q. First let me ask you if this method of arriving at
2121 the results you were explaining to Mr. Hagerman a few minutes ago (which was not put into the record)—when you reached this second column of Exhibit 29, is the same method pursued by Mr. Sturgis in reaching his ratio of three to one?

A. The same method, and, of course, the only proper basis upon which it could be determined. As an illustration, I will say that if you assume that three ton miles costs ten cents, that would be an average of three and one-third cents for each ton mile. Then if you assume that of those three ton miles one ton is state ton miles and two tons are interstate ton miles, if you wanted to find out what the cost of the state as compared with the interstate was, assuming the state was double, you would take the one ton mile of state freight and multiply it by two, which would give you two ton miles. Then take two tons of interstate and add that, and your total would be four tons two tons of state and two tons of interstate freight. Although there was really but one ton of state freight, multiplying it by two gives two tons of state. Those two together give you four tons, dividing that four into your cost, ten cents, (which remains the same) gives you a cost of two and one-half cents per ton mile, as compared with three and one-third cents, which you had when you devided the ton by three.

Having determined that unit of two and a half cents, that represents the cost of the interstate ton miles. But the state freight, being double, would be five cents per ton mile. So in that case you would have two tons of interstate freight, costing two and a half cents each, which would be five cents; and one ton of state freight, costing five cents; which added to the other cost would give
2122 you a total of ten cents, which is what the three tons cost.

If you assume that the state freight costs three times as much as the interstate freight, then you would take that one ton mile of state freight and multiply it by three, which would give you three; add to that three the two ton miles of interstate, which would give you

five. That five ton miles divided into your cost of ten cents would give you the unit of two cents a ton mile. You would apply that unit of two cents to your two tons of interstate freight, which would give you four cents; and you would apply three times that unit of two cents, or six cents, to your one ton of state freight. The six cents and the four cents added together would give you again your cost of ten cents for the three miles.

On the basis of their all costing the same in that example, the rate would be three and one-third cents per ton mile for state and interstate.

On the assumption of state freight costing twice as much as the interstate, the cost for the interstate would be two and one-half cents per ton mile; and the cost of the state freight five cents per ton mile.

On the basis of the state freight costing three times as much, the cost of the interstate would be two cents a ton mile, and the cost of the state freight six cents a ton mile. Although in all cases your total three miles would remain at a cost of ten cents. You do not change the total cost which remains fixed at ten cents, but you change the distribution of that between state and interstate freight,
2123 by doubling your state mileage when you assume the state cost*a* twice, or by tripling your state mileage when you assume the state costs three times. But your total cost being fixed, you do not change that, and it remains the same.

Mr. HAGERMAN:

Q. Let me see how far apart you and Mr. Sturgis are.

Your total expenses cannot vary. Your total is one hundred per cent?

A. Your total is one hundred per cent.

Q. If it is divided upon the percentage of revenue; and, say, it was 80 per cent for interstate and twenty per cent for state, if that is the right way to divide it, on the basis of revenue, Mr. Sturgis does the example right?

A. Yes sir.

Q. Three times twenty makes sixty?

A. Yes sir.

Q. And that added to the 80, makes 140?

A. Yes sir.

Q. So, providing you divide it in accordance with revenue, he is right?

A. His mathematical calculation, if he wants to assume that the state freight costs three times as much as interstate freight, in proportion to revenue; the cost of the operating expenses divided exactly on the basis of revenue would make twenty; then he would multiply that by three, after the same method?

Q. If I understand you aright (Look at your Exhibit 19)—if you were going to divide the total expenses in accordance with the percentage of your revenue, 74.27 would represent the interstate,
2124 and you are going to assume that the cost of the state business is twice as much, it would be twice 25.73?

A. Yes sir.

Q. And then a proportionate part of that sum?

A. Yes sir.

Q. So if you divide it in accordance with the percentage of tonnage, you would take your figures and work it out the same way, if that was the proper way?

A. Yes sir.

Q. Or, if the proper way was to divide it according to division 8, per ton per mile, would you work it out upon the same system?

A. Yes sir, I would take my two figures, whether ton miles, revenue, expenses, pears and peaches, men and women, and whichever I wanted to multiply by two, three, four or five, make a new total, and get my percentages of that total.

Q. What I want to get at is, is that the difference between you? If some one told you what the basis was, whether revenue or some other basis, you would figure it out just as Mr. Sturgis did—in other words, if you were told that the correct basis was the revenue basis, you would figure it out just as Mr. Sturgis did?

A. Yes sir.

Mr. LADD:

Q. In connection with these two exhibits, Nos. 28 and 29, on the fourth line of both of these sheets appears this language: "Other C. T. expenses:" You do not allow any additional cost in connection with the state traffic on account of those "Other C. T. Expenses?"

2125 The expense on account of "Other C. T. expenses" remains the same in all three Columns? For instance, in Exhibit 29 it is 2.205 cents, precisely the same in all three columns.

A. Yes sir.

Q. Therefore, you do not allow any extra expense on account of those "other C. T. expenses," do you?

A. No sir.

Q. What are they, those "other C. T. expenses?"

A. Other conducting transportation expenses include the operation of stockyards, elevators, signal men, highway crossing watchmen, policemen, signal supplies, highway crossing supplies, clearing wrecks, injuries to persons, loss and damage, switching service, car service, hire of equipment, rent of buildings and other property, superintendence of transportation, floating equipment,—operation of, elevation and longshore labor, dining cars, stationery and printing—transportation, incidentals; operation of joint tracks, yards and terminals; flood damages.

Q. Those items you have enumerated were pointed out to you by Mr. Johnson?

A. Yes sir.

Q. You and he agree about that ?

A. Yes sir.

Q. In your opinion, is there any extra expense to be charged to the State traffic, over and above its normal proportion, on account of those expenditures?

A. No sir, I do not think so.

Q. And for that reason, you have not allowed anything extra on account of that?

A. No sir.

2126 Q. In the next line is "C. T." (which I understand means conducting transportation) traffic expenses: you do not allow any extra expense to the state traffic on that account: will you tell what is included in that item?

A. The conducting transportation traffic expenses, freight, which are included in this—only freight expenses being included—comprises superintendence, foreign agencies, advertising, stationery and printing.

Q. You do not allow any increase on account of those?

A. No sir.

Q. You think the state traffic ought not to be charged with any extra expense on account of that?

A. I do. As a matter of fact, I do not think they should be charged with the same proportion as the interstate, because I think the matter of advertising and foreign agencies would apply in much larger proportion to the interstate business than to the state business.

Q. The figures shown on these two sheets, Form 1940 and Form 1941, are figures for the system, which includes also the Iron Mountain Railway, and the Central Branch in Kansas?

A. Yes sir.

Q. I will ask you whether you think the average of expenses, as shown there, would be higher or lower in Missouri than these averages on the entire system?

A. In my judgment, the average expense per 100 ton miles would be much higher on the system as a whole, including all of the Missouri Pacific, the Iron Mountain and the Central Branch, than

2127 they would be in the state of Missouri, for the reason that the density of traffic is much greater on the Missouri Pacific within the state of Missouri than it is on the Missouri Pacific system as a whole.

That is very clearly illustrated by the fact that the total freight earnings of the Missouri Pacific Railway and branch lines from freight during the year ending December 31, 1905, were $14,252,615.73, of which the freight earnings in Missouri were $5,410,246.59. That is, the state of Missouri furnished 37.96 per cent of the freight earnings of the Missouri Pacific Railway, although only 25 per cent of the mileage of the Missouri Pacific Railway lies within the state of Missouri.

Mr. HAGERMAN:

Q. Where did you get those figures? From any exhibit that has been offered?

A. I do not think those figures have been offered.

Mr. LADD:

Q. Where did you get them?

A. It is a statement prepared by Mr. Schuyler—or given to us

by Mr. Schuyler, showing the earnings of the Missouri Pacific as a whole, for us to check and verify other figures.

Mr. HAGERMAN:

Q. What does the $14,000,000 include?
A. Only the Missouri Pacific.
Q. It is just freight earnings?
A. Yes sir.

Mr. LADD:

Q. What was the total mileage of the Missouri Pacific Railway which made those earnings of $14,000,000?
A. The mileage operated by the Missouri Pacific Railway Company is shown by the Annual Report of June 30th, 1906, to have been 3,492.54.
2128 Q. And what is the mileage in Missouri?
A. 972 miles.

Mr. HAGERMAN:

Q. Those 14,000,000 and the 5,000,000 freight earnings you refer to the Missouri Pacific as distinguished from the system?
A. Yes sir.
Q. This Form 1940 and 1941 apply to the System, as distinguished from the Missouri Pacific proper. That is, that included the Iron Mountain and Central Branch as well as the Missouri Pacific?
A. Yes sir.
The earnings figure that I gave were for the Railway only. We have not the earnings for the System for the calendar year 1905. But the freight earnings for the year ending June 30, 1906, are shown in the Annual Report of the President to have been $32,563,506.77.

Mr. LADD:

Q. That includes the Iron Mountain and the Central Branch?
A. Yes sir.
Q. Have you the earnings of the Missouri part of the System for that same period, the year ending June 30, 1906?
A. No sir.
Q. Returning again to Exhibit- 28 and 29, the next item is "maintenance of way and structures": I see you do not allow any additional charge to the State traffic on that account?
A. No sir.
Q. Why didn't you?
2129 A. In my opinion maintenance of way and structures would be the same per ton per mile in the case of State freight as in the case of interstate freight.

Mr. HAGERMAN:

Q. Are there any particular items that go in to make up that

maintenance of way and structures? Have you anything that tabulates that so we will know what is included in it, in your mind?

A. It is right here in your Annual Report. The items of operating expenses included under the heading "maintenance of way and structures" are, track maintenance——

Mr. LADD:

Q. You do not charge to the State traffic any more in proportion, on account of track maintenance, than you do the interstate traffic?

A. No sir.

Q. Do you know of any reason why it should be charged any more?

A. No sir, I cannot conceive that a ton of freight moving over the tracks would wear the track any more because that ton happened to originate in Missouri, than it would if it originated in Ohio, Canada, Texas or some other point.

Q. Go on.

A. The next item is "applying track material."

Q. What does that mean—laying it down and putting it in place?

A. I imagine so. I should judge that was respiking the tracks and putting in new ties.

Mr. HAGERMAN:

Q. I suppose it is putting it in place?

2130 A. I can tell you exactly. (Witness examines Form 1941).

"Applying Track Material.

This account includes:

(*a*) Rails.—Pay of employees engaged in handling (after first unloading), cutting, slotting, drilling and laying rails, adzing for new rails, gathering old rails and taking up expansion.

(*b*) Ties.—Pay of employees engaged in handling (after first unloading) and renewing cross, switch and bridge ties; applying, inspecting and marketing ties in tracks for renewal.

(*c*) Ballast.—Pay of employees engaged in applying ballast after it has been prepared and unloaded, and removing dirt from stone ballast in tracks preparatory to re-ballasting.

(*d*) Other Material.—Pay of employees engaged in handling (after first unloading) and applying rail braces, anti-creepers, switches, switch stands, frogs, crossing frogs, tie plates and other miscellaneous track material not mentioned above.

Mr. HAGERMAN: Wouldn't it be better to let him answer my question first, give a tabulation of the items that go into "maintenance of way and structures", so we will have it all in one place?

Q. Start again and tell us every item that is included in "maintenance of way and structures."

A. The operating expenses included under the heading of "maintenance of way and structures" are: Track maintenance;

2131 applying track material; roadway policing; flood damages; general cleaning; ballasting; track appliances; roadway tools;

other roadway maintenance; interlocking plants and signals; engineering and superintendence, Electric traction lines (of which I understand the Missouri Pacific has none). Rails, Ties, Bridges and Culverts, Fences, Road Crossings and Signs, Buildings and Grounds. Steam Plant, Repairs of, Electric Plant—Repairs of, Docks and Wharves, Telegraph and Telephone Lines, Stationery and Printing, Incidentals, Maintenance of Joint Tracks, Yards and Terminals.

Q. I observe on Page 47 of the printed report of the Company for the year ending June 30, 1906, in the statement of the operating expenses for that year, the total expenses of the System for the maintenance of way and structures was $5,378,125.37, and that track maintenance was $1,505,708.81, that item being between ¼ and ⅓ of the total expense of maintenance of way and structures: Now if in that book you have been reading from—it is a Missouri Pacific book, isn't it?

A. Yes sir.

Q. The item of what is called "track maintenance" involving an expenditure of 1½ million dollars is given, I wish you would give them.

A. "Track maintenance."

This account includes:

(*a*) Main Track Line and Surface.—Lining, surfacing, shimming and tightening bolts and spikes on main track.

2132 (*b*) Sidetrack Line and Surface—Lining, surfacing, shimming and tightening bolts and spikes on side tracks.

(*c*) Gauging—Gauging main track and side tracks.

(*d*) Respacing—Respacing ties in main and side tracks."

Q. Is that all under the head of "Track Maintenance"?

A. Yes sir, that is all.

Q. I think you have already explained that in your opinion the State traffic ought not to be charged with anything more than its proportion of the expense for track maintenance. Now go down through these other items which you have read off, and which Mr. Hagerman requests, under the head of "maintenance of way and structures." Do you see anything, or can you point out anything in that list, whose maintenance would be any more expensive on account of the handling of the state traffic than the state traffic's normal proportion would indicate?

A. No sir, I do not see anything, that it would occur to me there would be any increased expense on account of the State business, or anything on which the State should stand more than its per ton mile proportion.

Q. Something has been said in one of these cases, and possibly in this case, about sidings at stations at intermediate points on the road: Are these sidings used exclusively for the State traffic?

A. No sir, they are used for State and interstate traffic.

2133 Q. Referring again to Exhibit 29, on the next line "M. E." means "Maintenance of Equipment": You have not

charged the State traffic, in this Exhibit 29, with any extra part of that outlay: Why is that? What is your opinion about it?

A. I do not think the State should be charged with any more than its per ton mile proportion of the maintenance of equipment expenses. I cannot imagine it would wear a car out any more to haul a ton of freight a mile if that ton of freight originated in Missouri, than if it originated in New York, Canada, Texas, or some other point.

Q. According to the Company's system of sub-division, what is included under the head of "maintenance of equipment"?

A. Superintendence, repairs of locomotives, repairs of passenger cars——

Q. I suppose you might omit that?

A. Repairs of freight cars, Repairs of work cars, Repairs of floating equipment, Repairs of Tools and machinery, Stationery and printing, Heating and lighting shops, Watchmen, Incidentals, Equipment used in Joint Yards and Terminals—Repairs of.

Q. Take the first item "Repairs of Locomotives": Is the same locomotive engaged at the same time in hauling State and interstate freight, in the same train?

A. Yes sir.

Q. Under the heads of "Repairs to freight cars," are the same cars used interchangeably, so far as they are suitable to the purpose, in handling State and interstate traffic?

A. Yes sir.

2134 Q. Is there anything, any expense in that list of expenses under the heading "Maintenance of Equipment" which in your judgment should be taxed against the State traffic in any larger proportion than a normal proportion based on the business, and the revenue or the volume of freight?

A. I cannot think of anything or any reason why the State business should be charged with more than its proportion on the per ton mile basis.

Q. And so you have excluded it from your computations?

A. Yes sir.

Q. And have not allowed any extra expense on any of those accounts?

A. No sir.

Q. You have allowed in the second column of Exhibit 29 double the expense for train and engine service on the State traffic per ton per mile?

A. Yes sir.

Q. Do you think that is right?

A. No sir, I do not. I think——

Q. Is it too much or too little, twice?

A. In my opinion it is a great deal too much.

Q. Your assumption is, then, more favorable to the Complainant than your own personal opinion justifies?

A. Yes sir.

Q. Do you think that the State traffic should be charged with any extra cost on account of the train and engine service?

A. Yes sir.

2135 Q. Why?

A. Because I think the ton miles of State freight handled on local trains is in excess of the proportion which the total ton miles of State freight bear to the total ton miles of both State and interstate freight together.

Q. Do you think the cost of handling local trains or way trains, is greater than the cost of handling through trains?

A. Yes sir, I think the cost of handling a ton of freight a mile on a local or way freight train, on the average is greater than the average cost of handling a ton of freight a mile on the through train.

Q. And because the proportion of State freight carried on the local or way trains is larger than the proportion in volume of State freight to all the freight, therefore the State freight should be charged with some additional expense incident to the operations of those local or way trains?

A. Yes sir, that is my idea.

Q. Do you think that State freight should be charged with all the additional extra expense attendant on the operation of the local or way trains?

A. No sir.

Q. Why not?

A. Because in my opinion the local and way trains carry more interstate freight than they do State freight. I mean by that, that of the total ton miles of freight handled by the local or way trains, more than half is interstate freight and less than half is State freight. Although I think the proportion of the State freight which is

2136 handled on local trains is greater than the proportion of State freight to all freight, still the State freight is such a small proportion of the total freight, being only 14 per cent, that of the toral business handled by the local trains, the larger part is interstate freight and the smaller part is State freight.

The MASTER:

Q. Do you think the whole additional cost which you are willing to admit, arises from the difference on cost in handling local or way trains, and through trains?

A. Yes sir. The cost of transporting a ton of freight a mile on a local train as compared with the same service on a through train.

Q. That is the reason you are willing to concede some additional cost?

A. Yes sir, and so——

Q. Now if it be that these local or way trains carry more interstate freight than State freight, why should not the interstate freight bear more than its half of the additional cost of these local trains?

A. If the local trains carry a larger per cent of ton miles of State freight, than the volume of the total business would warrant, then that excess should be larger against the State, on the basis of the excess. And when you apportion that excess to the State freight, on the same principle that we had this forenoon in the ton mileage,

in the case of train and engine mileage, you equalize all the other expense.

2137 That is to say, if your total expense for all of the freight is $100, and, for the purposes of illustration, 50 per cent of all the ton miles was State freight, and 50 per cent of all the ton miles was interstate freight; and the tonnage of the local trains and the tonnage of the through trains were each 50 per cent, then it would be proper to say that half of that total expense of $100 was State expense and 1/2 was interstate expense.

But if the proportion between the State and the interstate freight is 50 and 50, and the tonnage of the local trains instead of being 50 per cent State and 50 per cent interstate was 60 per cent State and 40 per cent interstate, then there would be 10 per cent of the State tonnage that should bear the increased proportion of that total expense of $100.

You would not increase your expense of $100. That would remain fixed. You have your expense fixed. But there would be 10 per cent of the total freight, which in the case I have cited would be State freight, which would cost more than the other 90 per cent.

If you have determined that cost, and we will assume for the sake of the argument that it costs twice as much to do business on the local trains as to do business on the through trains, per ton per mile, then you would say that 10 per cent should be multiplied by 2, or should be made 20/110 of the total expenses; and 40 per cent of the State freight, and 50 per cent of the interstate freight, would be divided equally between the balance of the expenses; that

2138 is, in their percentage ratio.

Q. Leave out of account for the moment the consideration of the through trains, and consider only the local or way trains.

A. Yes sir.

Q. Is there a larger per cent of ton mileage State than of ton mileage interstate freight on those local trains?

A. No sir. There is a larger per cent of ton miles interstate freight on those local trains than there is State ton miles on those local trains.

Q. And yet you say in your system of figuring, notwithstanding that fact, the State freight ought to be allowed credit for some additional cost?

A. Ought to be charged some additional cost.

Q. Yes, charged.

A. Because although the local trains carry more interstate than State freight, they carry less interstate than the proportion of all the interstate freight to the total freight; and they carry more State freight than the proportion of all the State freight to the total freight.

Q. It seemed to me that as the additional cost, if there is any, arose from the operation of the local trains as compared with through trains, that additional expense ought to be charged to that class of freight which occasioned it: That would seem to me to be so.

A. Yes sir. This example I have given here, by using these percentages would result in actually that condition, That al-
2139 though the State freight tonnage would be charged more per ton it would not be charged with as large a percentage as the interstate, because the interstate tonnage would be so much greater.

I want to say, if I may, Your Honor, that in the expense we are talking about just now, I was referring my remarks to the train and engine service.

Q. You think the total expense is made up of those two items?

A. Those two are included in the total operating expenses.

Q. And no other items that go to make up the increased cost of moving local trains?

A. That is my idea, exactly.

Mr. LADD:

Q. Assuming that the tons of interstate freight on local or way trains exceed that of the State freight, does it follow that the ton miles of interstate freight would be a larger percentage than the percentage of tons, on account of their longer haul?

A. Yes sir. If the volume of tonnage was the same and the interstate was hauled further, the interstate ton miles would exceed the State ton miles.

Q. Is the interstate freight hauled further?

A. Yes sir. We find that in the State of Missouri the interstate freight is hauled on an average more than twice as far as the State freight.

Mr. HAGERMAN:

Q. How about the actual tonnage moved, as distinguished from ton miles.

2140 A. The interstate tonnage, the number of tons, is fixed as 75.26.

Q. That is of all the business in the State?

A. Yes sir.

Q. Have you it for the way trains?

A. We have your exhibit which shows about 41 per cent of the tonnage on local trains is State, and some 59 and a fraction per cent is interstate.

Q. Which exhibit was that?

A. Exhibit 14, which was to be corrected and handed in but we have not yet received it. I do not know whether Mr. Roth has it here or not. Those figures I have given are after making a correction which Mr. Roth told me should be made in it.

Mr. LADD:

Q. One more item on this 28 and 29. It is the last one. "General expenses": You do not charge the State traffic with any more than its natural proportion of that expense: Now what in that schedule is included under the head of "General Expenses," according to the Missouri Pacific's system of accounting?

A. The operating expenses included under the heading of "General Expenses" are: General officers, clerks, attendants heat and light, office expenses and supplies, incidentals, law expenses, stationery and printing, insurance.

Q. Is there anything there, in your judgment, Mr. Ludlam, of which a larger proportion than a natural proportion should
2141 be charged to the State traffic, and if there is, point it out.

A. No sir, there is not anything there. If I made any distinction at all it would be to charge the interstate with more than the State, because I think that more time of the general officers, and clerks, is given to interstate business than to State business.

Mr. HAGERMAN:

Q. What would you do with the expenses of this lawsuit, for instance; that has nothing to do with interstate?

A. I should imagine that would be purely a State expense.

Q. With nothing to be charged to interstate?

A. I should think so, yes sir. That is an expense which you could segregate between State and interstate. Of course a majority of your general expenses you could not do so. You could not separate your officers' salaries and office expenses, etc.

Mr. LADD:

Q. Why do you say with respect to the salaries of the general officers, that more should be charged to interstate in proportion? Why do you say that?

A. Well, I think, speaking in a general sense, that the State business is a business that largely takes care of itself. The rates seldom change. They remain stationary. The clerks in the offices that are engaged in checking way-bills, checking agents' accounts, are familiar with them. The revising of the way-bills is a very simple matter. The clerks are familiar with those rates. Whereas,
2142 on nearly every interstate shipment the rates change, or the proportions changed, or the routing is different. The average revising clerk, in my judgment, would be able to check several bills carrying State shipments in the same time it would take him to check one bill in an interstate shipment. And the same would hold good throughout the entire business.

The officers spend time attending traffic associations and considering rates. Those are not State rates, which run along the same year in and year out. The State business is largely a non-competitive one, whereas the interstate is very largely competitive. And the more competition there is the more time and attention it takes of the officers and clerks.

Q. At all events, it is because you entertain those opinions that you have in this statement not embraced any additional expense on account of State traffic, so far as regards several items, large items, too, of expenditures included in operating expenses?

A. Yes sir.

Q. Mr. Ludlam, I will get you to state, from your experience, both your connection with railroads and railroad accounts, and

your experience as an accountant and auditor of accounts, including your experience in the examination of the books and papers of the Wabash and the Missouri Pacific Railroad for the purposes of this litigation. What unit, in your judgment, affords the closest approach to accuracy, as to either cost or revenue in the handling of freight?

2143 A. In my judgment the best unit known and I think it is generally so recognized among railroad men, is the per ton per mile unit.

Q. Some of your exhibits here, at least some of them, are based upon the ton mile, both as to cost and earnings as the unit; Is that the reason you have taken that as the basis of a number of these computations, that you regard it as the best attainable basis to work on in ascertaining cost and revenue?

A. Yes sir.

Q. Do you know, from your experience and associations with railroad managers and railroad accountants, and your auditing of railroad accounts, the accounts of other railroads, whether that is a recognized and approved unit in railroad circles.

A. That is the generally recognized unit, yes sir.

Q. Some exhibits have been prepared and presented and offered in evidence here on the part of the State, which relates to the business of particular periods; Exhibit 19 is an illustration of them; which relates to the business of October. And then there have been certain days in certain months: I would like to ask you whether any particular days or any particular periods have been selected by you or your assistants in the preparation of these exhibits, because you supposed they would make a more favorable showing for the State than any other periods or any other days?

2144 A. No sir. Wherever a period or a day has been selected, it has been selected because it was believed to be as typical or more typical than any other that could be selected.

Mr. HAGERMAN:

Q. Don't you think October is more favorable to you than any other month that could be selected?

A. October has a larger business but is not more favorable.

Q. Would that represent more or less than 1/12 of the business?

A. Yes sir.

Q. Would ten times that represent the year's business?

A. I should say ten to eleven times.

Q. I do not mean to indicate for a moment that you selected it purposely, but I know it is one of the big months of the year, and I want to get its proportion.

Mr. LADD:

Q. Do you regard October as a fairly representative month? I do not mean as regards the volume of the business, but is it fairly representative?

A. We so regarded it before we started the work, and we still so regard it.

Q. I do not mean to ask you by that whether every other month would have the same amount of business as October.

A. I think the result obtained from an analysis of the month of October are typical of the year's business; and I do not think the analysis of any other month would vary materially from the results shown by October.

2145 Of course we have not introduced any other month and so cannot compare them, but in our judgment there would be no material variation in the figures shown by October, from the showing of any other month in the year.

If there is any one month we would regard as typical it would be October, because we think there would be more business of all kinds moving in October than any other month.

Q. October is generally regarded as a good business month?

A. Yes sir, both from the standpoint of merchandise and of farm products.

Mr. HAGERMAN:

Q. It is a good grain and livestock period too, isn't it?

A. I should think it would be a large grain moving month, but not especially large as to livestock. Of course that would vary in different sections of the country.

Q. Two exhibits have been prepared and filed here in evidence by the Complainant, Exhibit- 7 and 8, showing the freight handled, one in carload lots and the other in less than carload lots at 88 stations in the State of Missouri?

A. Yes sir.

Q. Do you know for what month and for what period that examination covered?

A. I understand that covered the month of October.

Q. The same month you selected?

A. Yes sir. It is not stated on the exhibit, but I think in the testimony as I recall it, it was said that covered the month of October, 1905.

2146 Mr. LADD:

Q. That is right, isn't it, Mr. Doddridge?

Mr. DODDRIDGE: Yes, I feel certain it was October. I think October was taken because you had October under consideration here generally.

Mr. HAGERMAN:

Q. You knew they were looking at October, and you took it for that reason?

Mr. DODDRIDGE: Yes sir, I think that was the reason.

The MASTER: I have October marked on my exhibit.

Mr. LADD: Now in this statement Exhibit 19 which is in, and which you prepared, showing the business of the Company during the month of October 1905, you did not divide, for the reasons you have already stated, the interstate business into two classes?

A. No sir.

Q. If you had so divided it, what in your judgment would have been the revenue per ton on the through interstate freight as compared with the revenue derived from all the interstate carload as shown by that exhibit: Would it have been more or less?

A. In my judgment it would have been less.

Q. Could you make an estimate of how much less?

A. Yes sir. I do not think the revenue realized from the interstate through business would have exceeded 5 mills, or ½
2147 cents per ton per mile. And my opinion is it would have been nearer 4½ mills per ton per mile than 5 mills per ton per mile.

Q. That statement shows the average revenue per ton per mile on all the interstate carload business to have been about 6 1/3 mills: Is that right?

A. Yes sir, that is right.

Q. And you think on the through interstate business, that which passes through the State, starting out of the State and ending out of the State, it would not have been over 5 mills: Is that right?

A. Yes sir, not over 5 mills.

Q. Why do you think so?

A. Because that business that begins out of the State and passes through the State and terminates outside the State is very largely competitive business. Whereas there is a large amount of the second-class of interstate freight that is not competitive and on which the rates are higher than they are on that competitive business.

Q. I wish you would take again Exhibits 28 and 29: In the second column of Exhibit 28, Mr. Ludlam, you have the figures 3.734 cents as an estimate of the cost per ton on the State freight, or train service, upon the basis that the train service for the State freight
2148 costs twice as much per ton as the train service for the interstate freight: That is what that means?

A. Twice as much per ton mile, yes sir.

Q. The 3.734 cents is the cost per ton?

A. Yes sir, on the basis of its costing twice as much per ton per mile.

The MASTER:

Q. That is per ton per mile?

Mr. LADD: If your Honor will look at the first heading of cost per ton.

A. That column represents the cost per ton, based upon the cost per ton mile being twice as great on State as on interstate freight.

Q. The cost per ton per mile is in there, but these figures represent the cost per ton for State freight, do they?

A. Yes sir.

Q. I wish you would explain how you reach that.

A. The cost——

Q. What do you start with?

A. That is what I am going to explain.

2149 The cost per 100 ton miles for train service on the Missouri Pacific Railway, as shown by Form 1941, is 4.1 cents.

The ton mileage in the State of Missouri is shown by Exhibit 19 to be 14 ton miles of State freight to 86 ton miles of interstate freight.

Q. What is Exhibit 19?

A. Exhibit 19 is the statement of the freight business of the Missouri Pacific Railway in Missouri during the month of October, 1905.

Q. That showed the proportion of State ton miles of freight handled in Missouri was 14 and of interstate 86: Is that right?

A. Yes sir, approximately. That statement shows actually that out of each 100 ton miles the state freight moved 13.08 ton miles and the interstate freight moved 86.02 ton miles.

Q. But you discard the fractions and call it 14 and 86?

A. I discard the fractions for the purpose of these calculations as they are so small, and call it 14 for State and 86 for interstate ton miles.

Q. That was the operation of the Company for the month of October, 1905, in the State of Missouri?

A. Yes sir.

Q. Proceed.

A. If the State freight cost double, you would multiply the 14 by 2 which would give 28, and to that 28 you would add the interstate mileage of 86, which would give you 114. You would then
2150 take the cost as shown by Form 1941, 4.1 cents, and divide it by 114, which would give you the unit of .0359 cents per ton per mile. You would take that unit of .0359 cents and multiply it by 105.

Q. Why?

A. Because Exhibit 19 shows that all of the interstate freight in the State of Missouri during the month of October, 1905, was hauled on the average 105 miles.

The result of that calculation gives you 3.7695 cents as the cost per ton of the interstate freight in the State of Missouri, for the train service.

Q. You multiply the unit of cost per ton mile, 3.59, by the number of ton miles, 105, and then you have the cost per ton of hauling the interstate freight: Is that right?

A. Yes sir.

Q. Which is how much?

A. Which is 3.7695 cents.

Q. That appears in Column 2 of Exhibit 28, which is devoted to the interstate freight, does it?

A. Yes sir.

Q. Go on.

A. You would then take your unit of cost per ton mile of .0359 cents and multiply it by 2 to get the cost of the State tonnage per mile.

Q. That is on the theory of its costing twice as much per ton mile: Is that it?

A. Yes sir.

Q. What then did you find?

2151 A. That multiplication gives you .0718 cents as the cost per ton mile for the train service for State freight, if it

costs twice as much per ton per mile for state freight as it does for interstate freight. You would then multiply that .0718 cents by 52 miles, because the State freight is shown to have moved an average of 52 miles to each ton, by Exhibit 19.

Q. That is the October business of the Missouri Pacific Railway Company?

A. Yes sir. The State freight moved on an average 52 miles during the month of October, 1905.

Q. What does that produce?

A. That produces 3.7336 cents.

Q. It is 3.734 here?

A. In Exhibits 28 and 29 we did not carry it out beyond the 1/1000 part of a cent; and in the figures I have just given you it is carried out to the 1/10,000 part of a cent.

Q. That is the way you reach your 3.734 cents?

A. Yes sir.

Q. That is the cost per ton for carrying State freight: Is that right?

A. Yes sir.

Q. Your figures for engine service in Exhibit- 28 and 29 are reached in the same way, are they?

A. Yes sir.

Q. You go back to Form 1941 for the cost per 100 ton miles?

A. Yes sir.

2152 Q. For all kinds of freight on the System?

A. Yes sir.

The MASTER:

Q. Your basis of calculation was not per ton mile, but per 100 ton miles: Did you make allowance by dividing by 100 or reduce it to tons?

A. I made the allowance by dividing by 114, 114 being the result of multiplying 14, the State's proportion, by 2, which gave me 28, and adding to that 28 the interstate proportion which was 86.

Q. You start with the basis of cost per 100 ton miles and you end with the cost per ton mile, and then multiply by the number of miles to get the cost per ton?

A. Yes sir.

Q. Did you make that allowance for the starting point, that being 100, instead of a single ton cost?

A. Yes sir, that is what I was trying to make clear. That 100 ton miles must include 14 ton miles of State freight and 86 ton miles of interstate freight, because, as shown by Exhibit 19, of every 100 ton miles of freight in Missouri, 14 ton miles was State freight and 86 ton miles were interstate freight. Now, before dividing it to get the cost per mile I multiply the state freight by 2, and so, instead of dividing the 4.1 cents by 100, I divide it by 114, which gives me the unit of cost per ton mile.

Mr. HAGERMAN:

Q. When you get there to the end you call it "cost per ton".

2153 But when you get to the end of it, you mean "cost per ton per mile": Because all on earth, if you wanted to get the cost per ton, you would have to do would be to take the total tonnage and divide it by the mileage. You have not allowed for the rest of the distance. When you call it simply tons, aren't you fooling yourself about it, and isn't it after all tons per mile?

A. No sir. I am trying to prevent any deception, and to make it clear and get the actual facts.

I get the unit of cost per ton per mile and then multiply that unit by the mileage which the interstate freight was hauled on the average: and multiply that same unit by the amount equal to twice the unit of cost for the State freight, because it is assumed in this example that the State freight costs twice as much per ton mile as the interstate freight.

Q. To get it through my head—suppose the total tonnage was 10,000.

A. Yes sir.

Q. And the total expense was 20,000 cents; that would be 2 cents per ton, wouldn't it?

A. Yes sir.

Q. Then you do not have to go through any circumlocution to get that result. And yet, if there had been a difference in the haul you would figure it out and possibly make that four cents or one cent. Therefore, when you get through, don't you, although you call it tons in the end, figure out what it is per ton per mile?

A. No sir.

2154 Q. That is the way I figure your figures, that is all?

A. Taking your example of 10,000 ton miles that you speak of——

Q. There are no ton miles in that at all. The road just hauls 10,000 tons and it costs 20,000 cents to do it. I say that is 2 cents per ton.

A. If of those 10,000 tons you are referring to, 1,000 tons were hauled one mile and the other 9,000 tons hauled 1,000 miles each, it would be preposterous to say that the tonnage costs 2 cents per ton. Of course it is apparent that a ton that was hauled 1,000 miles would cost more than a ton which was hauled only one mile.

Q. I understand all that, but when you take that all into consideration——

A. I get the unit of cost per ton per mile and then reduce it to the cost per ton by multiplying it by the mileage each ton was hauled.

Q. I would say you were figuring it on a ton mile basis. When you get to the end of it, really it is the ton per mile?

A. It is the cost per ton determined on a ton mile basis, assuming that the State business costs exactly double per ton per mile, what the interstate business costs per ton per mile.

Mr. LADD:

Q. The Master spoke to you about commencing with 100 ton miles: Why do you do that, because Form 1941 deals with the cost of 100 ton miles? Is that it?

2155 A. Yes sir.

Q. Form 1941 is where you got your start of 4.1 cents?

A. Those are the Company's own figures which show it cost them to move one ton 100 miles, 4.1 cents.

Q. That is, for 100 tons one mile or one ton 100 miles?

A. Yes sir.

Q. The Master asked you about taking 100 ton miles: Have you made the allowance so as to reduce it to one ton mile, in the process of your calculation?

A. Yes sir.

Q. Instead of 100 tons?

A. Yes sir. I have reduced it to one ton mile, and then multiplied the unit of cost in the case of both State and interstate, by the distance hauled.

Q. And the fractions get a good deal smaller than they start with?

A. Yes sir.

The MASTER:

Q. That calculation, dealing with miles instead of percentages, is precisely analogous to Mr. Sturgis' process: His per cent became 136, as I remember it, instead of 100. And in your figures the miles become 114 instead of 100?

A. That is it exactly.

Q. And when reducing it back, instead of dividing by 100 you divide by 114?

A. That is it exactly.

Mr. LADD:

Q. Assuming that the average cost for train service in
2156 Missouri for 100 ton miles is the same as it was on the System, and assuming further that the cost per ton mile for the train service on the State traffic is twice as much as on the interstate——

A. Per ton per mile?

Q. Yes, per ton per mile. And assuming that the average haul of the State traffic is 52 miles, and the average haul for interstate traffic is 105 miles, is this result mathematically correct?

A. Yes sir, it is.

The MASTER:

Q. What you mean by results, I take it, Judge Ladd, is the result as shown in Exhibits 28 and 29.

Mr. LADD: Yes, Your Honor.

Mr. HAGERMAN:

Q. Why do you use the unit of cost for the ton mile on the entire system?

A. Because it is the only unit I have.

Q. Why didn't you use the unit of cost per ton mile in Missouri—because you haven't it?

A. Yes sir.

Q. If you had it, you would prefer to use it—or, rather, you ought to use that instead of the other, on account of your own theory?

A. Yes sir, I think if you had the cost per 100 ton miles in Missouri it would be better than the cost per 100 ton miles on the System as a whole.

Q. Did you make any difference in the cost per 100 ton
2157 miles and the cost per ton mile?

A. Yes sir, I make a difference of 100.

Q. If you had the actual cost per ton mile in Missouri, wouldn't that be the preferable way to make your calculations?

A. If I had the cost per ton per mile.

Q. In Missouri?

A. Yes sir.

Mr. LADD:

Q. But you haven't that?

A. No sir.

I should assume, Mr. Hagerman, without any specific knowledge in the premises, that on account of the greater density of traffic in the State of Missouri than on the entire system, that the engine and train service per 100 ton miles would be less in Missouri than it would be on the System as a whole.

Mr. LADD:

Q. You have not taken that into account in this calculation?

A. No sir, those figures are based entirely upon the cost on the System as a whole, as shown by Form 1941.

Q. That might be reversed, and be just the other way?

A. Yes sir, it might apply either way. And that would tend to show that the mere difference between the number of cars in and the number of cars out, would mean nothing unless you took it day by day.

Where you cover a whole month it means nothing at all, because they do not allow cars to lie idle at those local stations. They
2158 keep them moving around, according to the demand, and where there is business.

In other words, they do not attempt to supply the local stations with empty cars as they are needed, by storing empty cars at those local stations.

Q. On the chance of their having some business for them?

A. No sir.

Q. Mr. Ludlam, on page one of the original Exhibit 5, which is for 1905, I take it—this appears: "Total expense of local freight traffic $1,926,714.19": and that refers to a note at the foot reading, "The expense of handling local freight is arrived at by dividing the total freight expense on per cents based on gross earnings, after adding fifty per cent to the local earnings on account of the extra cost of handling local business as compared with interstate business."

What does that mean? Does that have any reference to the revenue or to the earnings?

A. Yes sir. That means that they have estimated the expense as being fifty per cent more in proportion to revenue. That is assuming that the revenue on the State business is more than twice as much per ton mile as it is shown to be, by Exhibit 19: I mean, twice as much per ton per mile on the state business as it is on the interstate business, then if they took the same proportion of
2159 earnings in the case of State freight that they take in the case of interstate freight, why then they would be charging twice as much per ton per mile, over twice as much per ton per mile on state freight as on interstate. But when they add fifty per cent to that expense, then they are charging over three times as much per ton per mile as the cost of the state business, as they are charging for the cost of the interstate business.

Q. For instance, suppose it were said that the State business cost three times as much in proportion to revenue as the interstate business, and it appeared that the revenue from the state business was twice as much per ton per mile as from the interstate business, what does that mean? Three times as much in proportion to revenue? How much more per ton per mile under such circumstances as those?

A. Six times per ton per mile.

Mr. HAGERMAN:

Q. As I understand you, the way you figure out the increased revenue per ton per mile, according to your Exhibit 19, every time we say it costs twice as much to do the state as the interstate business, you just offset it by the increased revenue: isn't that the way your figures run?

A. That would be the application that would be made; if the revenue was twice as much, and you figured the percentage of revenue to expense, you would get the same ratio.

Q. We could not get even with you until we used the multiple of two, according to your theory?

A. You are twice even with us to start out with. You double your expense on the state business, right on the start, when you take the same ratio of expense to earnings.

2160 Q. What I had running through my mind was that your figures, as you figure on your assumptions, and on your Exhibit 19, upon your theory we would have to say it cost practically twice as much to do the state business as to do the interstate, before we get even with the increased revenue, according to your own theory?

A. No sir, you do say it costs twice as much, when you take the same ratio of expense.

What you should do, is to divide your expenses, to get the same ratio. You double it. And when you increase it, as you have in this case, fifty per cent, you make it three times. If you increase it three times, you make it six times. And if you increase it six times, you make it twelve times.

Q. Do you mean that if you make it six times on the ton mile

basis, that is the equivalent of three times as much on the revenue basis: is that the way it works out?

A. Yes sir. If the revenue on the state business was just double what it was on the interstate business per ton per mile: But, as a metter of fact, the revenue per ton per mile was more than double.

Q. It was just about double, according to your figures on Exhibit 19?

A. A little more than double.

Q. We were calling it double, for practical purposes. It was running through my mind that your theory was practically that way.

A. I would like to make that very clear—and I do not think I can make it too clear—that the revenue has no possible rela-
2161 tion to the cost. It costs the company just as much to haul a ton of sugar a mile in Missouri, whether that sugar originates in St. Louis or whether it originates in New York. And the revenue in Missouri is twice as much for hauling it that mile as the revenue on the sugar that originates in New York that is hauled one mile in Missouri. But the cost of actually hauling that ton of sugar a mile is the same in both cases. And the mere fact that the revenue is twice as much in one case as it is in the other case does not in any way affect the cost per ton.

Q. That is to say, in ascertaining the cost, the question of revenue should not enter into it, in your judgement?

A. Absolutely not.

Q. The cost has nothing to do with the revenue?

A. They are two separate and distinct factors. Cost has no more relation to revenue than any two things that are entirely separate and distinct.

Q. So if it actually costs, on any theory you figure it out, three times as much to do the State business as to do the interstate business, it should not be considered so far as it effects the question of revenue?

A. The revenue may be ten times as much, but they have no relation to each other.

Q. The cost must be determined as something separate and distinct and apart from the revenue?

A. Unquestionably. I would like to illustrate that by a little example I have here.

2162 If you take two tons of freight, each one moving a mile, and one of those tons is state freight, and, for the purpose of illustration we will assume it earned ten cents for moving that mile. The other ton is a ton of interstate freight, which was moved one mile, and we will assume that it earned five cents for moving that mile. That would make your total earnings fifteen cents. The expense, we will assume, for hauling those two tons one mile, both tons of freight being of the same class, would cost identically the same, say ten cents. If you take that expense of ten cents, however, and divide it on the basis of revenue, you would apportion two-thirds of the total expense against your ton of state freight, or six and two-thirds cents, because the state freight earned two-thirds of the total revenue of fifteen cents. And if the total expense was

ten cents, and you apportioned it on the basis of revenue, you would apportion two-thirds of the expense to the state business, which would make the expense for hauling that ton of state freight six and two-thirds cents, as compared with the expense of hauling that ton of interstate freight, three and one-third cents.

Now there you get a condition right away where it costs you twice as much to move that ton of state freight a mile as it costs you to move a ton of interstate freight a mile, although they both moved under exactly the same conditions, possibly in the same car, and over the same track.

That is the result of apportioning it on the basis of revenue.

Now, if you take it on the three-times basis; that is three
2163 times in proportion to revenue, the state freight earnings being ten cents, and the interstate earnings five cents, you would multiply your state earnings by three, which would give you thirty for the state as against five for the interstate. That worked out to a conclusion would result in that ton of state freight costing you 8 4/7 cents for moving it a mile, as compared with a cost of 1 3/7 cents for moving another ton of exactly the same kind of freight, perhaps in the same car, a mile. The expense in the case of the state freight, 8 4/7 cents, would be exactly six times the expense of the interstate, which figures out 1 3/7 cents.

Now, then, if you go still further and assume it costs six times in proportion to revenue, the state revenue being still ten cents, multiplying that by six gives you sixty. The interstate revenue remains the same, five cents. If you apportion your expenses on that basis, the total expense of moving those two tons one mile each, ten cents, you would have to apportion 12/13 to that ton of state; or, worked out, the ton of state freght would cost 9 3/13 cents for hauling it a mile; as compared with a ton of interstate freight, costing 10/13 cents for hauling it a mile; although it may move in the same car, and is the same class of freight, and moves over the same track.

In that case, where you say the expense is six times in proportion to revenue, you are apportioning to the state expenses twelve-thirteenths of the total cost of moving those two tons one mile.

And that is not an exaggerated case, because I start out
2164 with a revenue of ten cents for the ton mile of state freight as compared with a revenue of five cents for a ton mile of interstate freight. That would make the state revenue just twice the interstate revenue. Exhibit 19 shows that taking all the state freight into consideration, and all the interstate freight into consideration, the company received more than twice as much per ton per mile for the state freight as it did for the interstate freight.

Mr. LADD:

Q. Assuming that the revenue for performing certain services for state freight is twice as much as the revenue for performing the same service in the case of interstate freight, what does it mean to say that the cost of handling state freight is seven times as much as the cost of handling interstate freight in proportion to revenue.

A. It means that you are assuming that the cost of moving the state freight is fourteen times as much per ton per mile as for moving the interstate freight.

And the point I would like to illustrate is, that where the service is the same, there can be no difference in the cost. The point of origin of the freight can have no effect on the cost as I see it, although where the service is the same the revenue is not the same, by any means.

Q. Take a carload of salt, and a carload of sugar, both in barrels, ordinarily, which would bear the higher rate for transportation?

A. The sugar would run from double to more than double as much as the salt, for the same distance, and the same weight.

Q. Suppose it is twice as much, and there is the same weight in the car, and that it is in barrels, and although both carloads
2165 are shipped from St. Louis to Jefferson City, and go into the same train—is that an illustration of the proposition that the revenue received has no relation to the cost of the services?

A. Yes sir.

Q. The company would get twice as much for hauling that carload of sugar as it would for hauling that carload of salt?

A. Yes sir.

Q. And the expense is exactly the same in both cases?

A. Yes sir. I would like to say, before I get away from that—I should like to qualify that by saying that when I say the expenses are exactly the same, I mean that the only possible difference in the cost is the liability which the company assumes for the value of the two shipments, the sugar being more valuable than the salt. But the total loss and damage paid by the company are such a very small per cent of their gross earnings, that when you come to consider the cost per ton per mile, it almost vanishes.

Q. I wish you would take a paper, which we will offer in evidence as Exhibit 25: Did you prepare that paper?

2166 A. Yes sir.

Mr. LADD: We will offer in evidence the paper referred to as Defendant's Exhibit 35.

Defendant's Exhibit 35 is in the words and figures following, to-wit:

2167 Q. Where did you get the figures in the first column of Exhibit 35, under the head of "amounts"?

A. From Exhibit 27.

Q. Those are system figures?

A. Yes sir.

Q. Where did you get the figures in the second column, under the heading of "per cent"?

A. We made those figures.

Q. Those you worked out yourself?

A. Yes sir.

Q. You think they are accurate?

A. They are the per cents which the amounts in the first column represent, and they are correct.

Q. Of the total operating expenses?
A. Yes sir.
Q. In respect to the expense of doing the State business as compared with the interstate business, what, for the purposes of this exhibit, is assumed to be the proportion?
A. It is assumed that the station service, yard service, train service, and the engine service, each cost twice as much per ton per mile for State business as for interstate business.
Q. When you speak of State business there you mean State business of all kinds, both carload and less than carload, and the same is true in respect of the interstate business, is it?
A. Yes sir.

2168 Q. Go on down to the second group of figures on that statement: The one headed "ratio" and the other "State" and the next one "interstate." That is, that first column consists of percentages?
A. Yes sir.
Q. All three columns are percentages?
A. Yes sir. The percentages shown in the first column are the percentages shown above, brought down.

Mr. HAGERMAN:

Q. In the first column the percentages are exactly the same as they are in the second column of the first list of figures?
A. Yes sir.
Q. But not in the same order?
A. No sir.

Mr. LADD:

Q. The second column of percentages remains the same as the first column of percentages, with the exception of those which refer to station service, yard service, train service, and engine service: Is that right?
A. That is correct.
Q. And you have put them upon the basis of twice as much for State as for interstate; Is that right?
A. Yes sir, twice as much per ton per mile for State as for interstate.

Mr. HAGERMAN:

Q. The designation is made where it is figured at twice as much?
A. Yes sir.
Q. They are not all figured out twice: Take maintenance of way and structures for instance.

2169 Mr. LADD: That remains the same. He does not make any change in that.
Mr. HAGERMAN: So the first column, under the head of "State", and the second column under the head of "interstate" are prepared upon the basis that as to train service, yard service, station service and engine service, the state costs twice as much per ton per mile as the

interstate, and as to the other items of expenditure, the state costs the same as the interstate is that right?

A. Yes sir.

Q. When you reach the figures in the second column, for instance, 9.92, 12.37, 11.96, 26.21, the state's percentages for those four different branches of the service, do you reach them in the same way you have reached results before that have been talked about, that is, multiplying something by two, and increasing the total number above one hundred in that way?

A. Yes sir.

Q. So that your total percentages, the aggregate of your total percentages, in the second and third columns, instead of being 100 is how much?

A. In the second column the aggregate is increased from 100 to 115.11; in the third column, it is decreased from 100 to 84.89.

Q. What is the sum of those two percentages, instead of being 100?

A. The aggregate of those two percentages is 200, because I take two tons, for the purpose of this calculation, one state and one
2170 interstate.

Q. Well?

A. Consequently, of that 200, there is 115.11/200 apportioned to state, or 57.55 per cent; and 84.89/200, apportioned to interstate, or 42.45 per cent.

Q. Upon those calculations, how much greater is the state's proportion of the total operating expenses, then the interstate's proportion?

A. It is 35.57 per cent per ton per mile.

Q. 35.57 per cent of the total operating expenses?

A. No sir. It is 35.57 per cent per ton per mile more than the cost of the interstate business per ton per mile.

Q. I understand: that is the State's percentage of all the operating expenses, not only those you doubled but all the rest; it is 35.57 per cent greater than the interstate's proportion of the total operating expenses.

Mr. HAGERMAN:

Q. Per ton per mile?

A. Yes sir.

Mr. LADD: Per ton per mile, of course.

Mr. HAGERMAN: That is very different from your question.

Let me understand what you are driving at: you get this up on the theory, first, that this Exhibit 27, Form 1941, is a basis applicable to this Missouri Pacific situation; then you eliminate from it such items as maintenance of way and structures, upon the theory that there could not be any increased expense on those items?

2171 A. I eliminate any increase, but not the items.

Q. And when you get through with it, it works out that upon the whole, taking everything into consideration, every operating expense, including that which ought to be increased for state

business over interstate, there is as a whole, 35.57 per cent greater cost per ton per mile in doing the state business than the interstate?

A. Yes sir.

Mr. Ladd:

Q. In your opinion, does the station service cost twice as much per ton per mile on State as on interstate traffic?

A. I should say, on the average, it would. I think that would be a very fair ratio of increase, for the reason that the interstate business on the average, moves in Missouri twice as far as the state business. There would not be a great deal of difference per ton at the station. I think the time, on the average, required to bill an interstate shipment is greater than the time required to bill a state shipment, because, as a general proposition the clerical force at the station is more familiar with the state rates than they are with the interstate rates. And sometimes the interstate rates are complicated, and they have to spend some time figuring them out, and frequently have to communicate with the home office. But that would be such a small proportion of the whole, that, although as to that proportion I think the expense would be greater on the interstate than on the state, I think it is very fair to say, as a whole, that the station service for state business would cost twice as much per ton per mile as the station service for interstate business.

2172 Q. Take the yard service; in your opinion, does the state yard service cost twice as much per ton per mile as the interstate?

A. No sir; in my opinion, the yard service would not cost twice as much per ton per mile, for the reason that the interstate freight, on the average, has more use of the intermediate terminals.

Q. In your opinion, then, that is a safe estimate?

A. Yes sir.

Q. Take train service: does that, in your opinion, cost twice as much per ton per mile for state as it does for interstate business?

A. No sir, it does not.

Q. Why?

A. Because, in my opinion, the only increase apportionable to train service, applicable to state as compared with interstate business, would be the same as that proportion of the state business which was moved on the local trains in excess of the proportion of the state tonnage to the total tonnage of the state.

Q. What items are included in train service, according to the Missouri Pacific Railway Company's distribution?

A. Exhibit 27 shows that train service includes: Regular time of train men; over and constructive time of train men; oiling cars; and other supplies.

Q. Take the matter of engine service: In your opinion, does the engine service cost twice as much per ton per mile in the case of state freight as it does in the case of interstate freight?

2173 A. No sir, it does not, for exactly the same reason as stated in the case of train service.

Mr. HAGERMAN:

Q. Why did you put the twice in there, if that is so?
A. To be——
Q. Just to be liberal?
A. Not to be liberal, but to show the maximum.
Q. You are not putting it in there as an expression of your opinion, but just for purposes of illustration?
A. To cover what would be what we consider the maximum.

Mr. LADD:

Q. Have you prepared another statement, which I will offer in evidence as Exhibit 36?
A. Yes sir.

Mr. LADD: I will offer in evidence the paper referred to as "Defendant's Exhibit No. 36".

Defendant's Exhibit No. 36 is in words and figures following, to-wit:

2174 Mr. HAGERMAN:

Q. As I understand it, in Exhibit 36 you have done the same work as in Exhibit 35, but you do not use the same multiple?
A. We attempt to apportion it as shown by the Exhibits in this case.

Mr. HAGERMAN: I would like to have Mr. Ludlam give, in a general way, how it supplements and fits in with Exhibit 35.

Mr. LADD:

Q. Explain, as briefly as may be, the theory upon which you proceeded in the preparation of Exhibit 35, and how it differs from any other exhibit.
A. Exhibit 36 differs from Exhibit 35 in that in Exhibit 35 it is assumed that the train and engine service cost twice as much per ton per mile in the case of the state business as in the case of the interstate business.
Exhibit 36 attempts to apportion the exact excess of that train and engine service, which is applicable to the state business, as compared with the interstate business, based upon the tonnage of the two classes of trains, as shown by Exhibits 14-A and 15.

Mr. HAGERMAN:

Q. With the result that in this exhibit, as to train service and engine service, instead of showing two times as much, it is practically 1.20 times as much?
A. Yes sir.

Mr. LADD:

Q. You spoke about the excess of state freight, in the way of local trains, didn't you?
A. Yes sir.
Q. What did you find, or calculate for the purposes of this ex-

hibit, that the excess of the state freight in the local trains
2175 is over the interstate freight? That is, excess over and above its proper proportion?

A. 4.67 per cent more of the state business was carried on local or way trains than should have been carried on those trains.

Q. How much should have been carried? How do you get at what should have been carried on them? I do not ask for the figures or percentages.

A. We found out the per cent of the tonnage carried by the local trains of the total tonnage. Then we found out what number of tons that per cent would be of the total state tonnage. Then we took the division of the tonnage carried by the local trains, between state and interstate freight, and so determined what percentage of excess state business the local or way trains carried over what they should have carried, if they had carried their normal proportion.

By "normal proportion" I mean if the loading of the local trains, and the through trains had been divided on exactly the same basis as the total volume of the state tonnage is divided between state and interstate.

Q. Now, let me see if I understand that. For the purpose of illustration, suppose the total state tonnage is twenty-five per cent, and the total interstate tonnage is seventy-five per cent; the state tonnage is one-fourth, and the interstate tonnage three fourths of the total tonnage?

A. Yes sir.

Q. Do you mean to say that if the freight carried on these local or way trains had been one-fourth state and three fourths
2176 interstate, that there should be no extra expense charged to the state freight?

A. Yes sir.

Q. That is it, is it?

A. Yes sir.

Q. But because, as a matter of fact, the amount of state freight carried on these way trains is more than one-fourth, and the amount of interstate is less than three-fourths, therefore the state traffic should be charged with an additional cost on account of this excess: is that it?

A. Yes sir.

Q. What did you find that excess to be, in per cents?

A. We found that the local trains carried 4.67 per cent more of the state business than they should have carried.

Q. Look at the first page of this Exhibit 36, and the second paragraph below the first bunch of figures: how many local trains do you have there as the basis of your assumption?

A. One local train a day each way between St. Louis and Kansas City.

Q. In the next paragraph, how many through trains did you take as the basis?

A. Six through trains a day each way.

Q. Why did you assume that number of local and through trains, respectively, as a basis? What authority have you for that?

A. The testimony in this case.

Q. The testimony of whom?

2177 A. Of Mr. Doddridge; he testified that they ran at least six through trains a day each way, between St. Louis and Kansas City; and, as I recall it, he said that in his opinion there would be more than that.

Mr. HAGERMAN:

Q. I would like to ask you, Mr. Ludlam, in Exhibit 35 (which is coupled with Exhibit 36), when you come down to your second set of figures you commence to talk about "ton per mile": in the first set of figures you give the amount of the different items going to make up the freight operating expenses, as you have them, from Form 1941; that is right, isn't it?

A. Yes sir.

Q. Then your percentages are just calculations showing the per cents of the whole?

A. Yes sir.

Q. Upon what do you bring into the thing the ton per mile? Why cannot you get these percentages, regardless of ton per mile—or would they be the same?

A. Because those percentages show the divisions of each class of operating expenses to the total operating expenses. And the division would be the same, whether applied to the total expenses or the cost per ton mile, or the cost of all ton miles. In other words, assuming for the purposes of illustration, that you had determined that the cost per ton mile was five mills; then, 15.52 per cent of the five mills would be the cost for maintenance of way and structures, included, and so on.

Q. I know how I could work it out. I could work it out on the revenue, or any other basis. But when you are dealing with

2178 percentages, such as your 57.51 per cent, constituting the total Conducting transportation expense. If all those items were subjected to a multiple of twice as much, when you put the ton mile business in, that is something which you add yourself; wouldn't the figures come out just the same if you figured the double cost without regard to the ton mile—or would they?

A. No sir, because the unit for calculation is the cost per ton mile.

Q. That is to say, if you use the revenue basis, it divides itself on a basis of about 75 per cent interstate, and 25 per cent state, in round figures?

A. Yes sir.

Q. And if you use the ton basis, it divided itself practically the same way, in round numbers?

A. Let me look at Exhibit 19.

Q. It is practically 75 per cent and 25 per cent, isn't it?

A. Yes sir.

Q. And when you come to the ton mile basis, you can figure it so it gives 86 per cent and 14 per cent?

A. You say I can figure it?

Q. You do figure it so by Exhibit 19.

A. The figures themselves show that.

Q. So when you get your Exhibit 35, you are figuring on the basis of 86 per cent interstate, as against 14 per cent state?

A. It is the basis of the actual ton mile, whatever it is.

2179 Q. That is the basis upon which you run it down?

A. You can take your operating expenses on the same basis. The percentages would apply to either.

Q. What I am getting at is, does your example on Exhibit 35, work out by the use of the percentages 96 and 14, on the ton mile basis, as shown by Exhibit 19?

A. No sir. It is not based in any way, shape, or manner on Exhibit 19.

Q. And those percentages of 86 and 14 would have no bearing in reaching the same result as you get in Exhibit 35?

A. No connection whatever.

Q. And it would not bring out the same figures, would it?

A. They are entirely different figures. One is the percentage of tons, and the other is the percentage of cost.

Q. The percentage of tons is 75 and 25; the percentage of ton miles is 86.14; if you use that as a simple example, would it bring out the same figures that you have brought out in Exhibit 35?

A. Those two exhibits have no relation to each other whatever.

Q. I know that. But if you used, in figuring out your exhibit 35 (And I am only asking it to know if I can figure it with you)—if you would use your percentages of total ton miles found in Exhibit 19, would it bring the same result?

A. If you applied the percentages shown by Exhibit 19,—why, you cannot apply the percentage of cost to the ton mile. One has no relation to the other. One simply shows the division of operating expenses; and the other shows the division of ton miles.

2180 Q. What I want to know is the fact, whether it would bring out the same result. Exhibit 19 shows the percentage on a revenue basis. It shows the percentage on the per ton basis. It shows also the percentage of total ton miles, 86 as against 14. Now would the use of these figures, 86 and 14, of Exhibit 19, applied to your percentages on Exhibit 35, bring out the same result, or would they have any connection?

A. It would have no connection whatever. One is the percentage of the different elements in the operating expenses to the total operating expenses; and Exhibit 19 relates to the revenue and the tons.

Exhibit 35 shows the different items of operating expenses entering into the element of cost per ton. Exhibit 19 shows the per cent of tons.

You can take one ton or one thousand tons, and figure out a ratio of cost, and you will get the total cost of your tons.

Exhibit 35, as stated, is simply a division of operating expenses?

Q. I don't know anything about that refined method of calculating, but I do know that if you apply a multiple to conducting transportation alone, and nothing else,—say, two, you could work out your percentages, and get the percentage of all the operating expenses to be charged extra to the state business.

A. That is what Exhibit 35 does.

Q. If you did it upon the revenue basis, it could be done upon the figures set forth in your Exhibit 19: if you did it upon
2181 the ton basis, regardless of ton miles, you could do it practically upon the basis of 75 per cent and 25 per cent. And it seemed to me that the same result ought to come, as you get in your figures, if you used the percentages on Exhibit 19, of the total ton miles.

A. In the sense you use it, they would have no more connection than the number of tons of coal used in the engines has with the number of times the wheels turn under a box car.

Q. Mr. Ludlam, in your opinion, is it possible or practicable to ascertain accurately or exactly the increased cost of doing State business over interstate business?

A. No sir.

Q. What approach to accuracy do you think can be made?

A. I think there are certain elements that enter into the question that are more or less a matter of opinion. Such, for instance, as the increased cost of doing business on local or way trains, over the cost of doing business on through trains. But I think if you make allowance for all those questions, all of those elements, you can still demonstrate even after making the most liberal allowance for those items that are matters of opinion, and still demonstrate that mathematically the cost of doing the state business could not ex-
2182 ceed the cost of doing the interstate business by as much as 50 per cent.

Q. Per ton mile, do you mean?

A. Yes, sir.

Q. And you think that within the 50 per cent limit it might be a matter, and is to some extent at least a matter, of opinion?

A. Yes, sir. I think I said that as to certain items it is a matter of opinion. But if you allow the most exaggerated estimate of those particular elements that are matters of opinion, you still cannot exceed a total maximum cost in excess of 50 per cent on the state business over what it is on the interstate business per ton per mile.

Q. Within that 50 per cent limit I would like to ask you to give such opinion as you may have derived from your investigation during these cases, and from any other sources of information you have enjoyed, if you have not been——

Mr. HAGERMAN: That is objected to because this witness under the testimony is not qualified to express an opinion on that subject.

Mr. LADD: Let me finish my question.

Questions continued.

Q. Your opinion as to the extra cost of doing the state business over interstate business?

Mr. HAGERMAN: That is objected to because the witness has not shown himself to be qualified to express an opinion upon that subject.

The MASTER: The objection is overruled.

2183 A. In my opinion the cost of doing the state business is not in excess of 25 cents more than the cost of doing the interstate business.

Q. Per ton per mile?

A. Per ton per mile.

Q. If we were absolutely together on the proposition that it costs three times as much to do the state as to do the interstate business, Mr. Sturgis' method of doing that example is right.

A. Three times as much in proportion to revenue—yes.

Q. And you can apply that example either to the ton mile basis, or to the tonnage basis, or to the revenue basis: It is just a matter of mathematical calculation?

A. No sir, I don't think that at all. You can apply it to anything. You can apply it to the number of men in St. Louis. But, if you want to apply it correctly, you apply it only to the ton mile basis.

Q. How would you figure, if you were going to find a valuation of the property in Missouri, to assign to the freight business upon which you were entitled to a return; how would you divide the total valuation in the state—how do you divide it?

A. To find out the proportion applicable to the local freight business?

Q. Yes. We have got property in the state: We have so much, as it is used in the passenger business; and used in interstate, and used in state business. How do you figure the property upon which we are entitled to have some kind of a return, in the transportation of state business; have you made any figures on that?

A. I have not.

2184 Q. Have you any idea as to how that should be divided?

A. I would want to think about it a little.

Q. Haven't you ever thought about it in all the litigation?

A. Only in a most superficial way.

Q. What is your idea about what we should have a return on? Would you allow anything?

A. Oh, yes, unquestionably.

Q. What?

A. I think that is a legal question, and not an accounting question. I am perfectly willing to give my opinion if you wish it.

Q. I think there is a good deal you have testified to, that I might say was a legal question, but you are here as an expert, and your opinions are entitled to respect.

A. I will be very glad to give an answer.

If I made a division, I think I would apportion it on the basis of the gross revenue.

Q. Why would you apportion it on the basis of the gross revenue?

A. Well, because—It does not seem a very good explanation—but because it is the simplest method.

Q. That is one good reason. And another good reason is what?

A. It is the most direct method.

Q. It is the most direct method of arriving at practical results, taking everything into consideration. You have a whole property

in the State, and you get a whole return. That comes pretty near, in your opinion (upon a division of what you get a return
2185 on) to being a fair and good way to divide it, doesn't it? First, because it is simple?

A. I don't know that that holds, Mr. Hagerman.

Q. The simplicity of it, there is no question about?

A. There is no question about the simplicity.

Q. What about the fairness? What objection is there to the fairness?

A. I am speaking in the most superficial way; but there is this objection that occurs to me: The net earnings have something to do with it, as well as the gross earnings. If you have that track there, and do ten dollars' worth of business, and it costs you nine dollars to do it, you earn only one dollar from that business. And, from another kind of business you earn ten dollars, and it costs you six dollars to do it, you really earn four dollars on that business. It is a question whether you ought to divide it half and half, because one earns you four times as much as the other.

Q. You never heard of its being divided except in the way of which you spoke, that is, upon the gross revenue basis?

A. No sir, I don't think I have ever heard of it being divided at all, Mr. Hagerman.

Q. It is quite a problem to make any division between these different interests: I want your reasons, if you have any. Have you any other observations to change the opinion you have expressed, that it ought to be done upon the gross earnings basis?

A. I don't want you to construe that as meaning that I think that is the way it ought to be done.

Q. You said in your judgment it would be right, didn't you?

A. No sir.

2186 Q. Do you want to express an opinion that it should be done in some other way?

A. I want to say that without giving it some further thought, I would not want to say that. But the simple way would be to divide it on the basis of gross earnings.

Q. And so far as you can see that would be the way you would do it, if you were doing it now?

A. If I did it off-hand. But if a matter of that importance were left to me I should not do it off-hand.

Q. Let us go a step further: Do you know that the value of this whole road in Missouri is $60,000 a mile. Dividing it upon the gross revenue basis, assuming your figures were correct, would practically be 25 per cent, or $15,000, of that to the local or state freight, wouldn't it?

A. I don't think that much, but I have not those figures. I should say, off-hand, it would not be anything like that, because the local freight earnings, as I recall it, are only 27 or 28 per cent of the gross freight earnings, and then of course there would be the passenger and mail earnings.

Q. What per cent of the whole is it?

A. It would be about 20 per cent, roughly.

Q. And upon the basis of $60,000, that would be about $12,000 a mile?

A. Yes, sir, roughly.

At this point recess was taken until two o'clock.

2187 Q. Let us take this thing of a comparison on a ton mile basis between state and interstate, for just a moment, Mr. Ludlam; The only thing you compare is the number of miles in Missouri?

A. Yes sir.

Q. With the number of miles of State freight carried?

A. Yes sir.

Q. Of course that has got to be in Missouri?

A. Yes sir.

Q. Is that a fair comparison per ton mile, assuming the shipment came one thousand and fifty miles outside of the State, and one hundred and five miles inside the State?

A. Yes sir. My idea is that by reducing it to a per ton per mile basis, you equalized that difference.

Q. But whenever you reduce it to a per ton per mile basis, the longer the haul the less the amount per ton per mile in the way of expense?

A. Up to a certain limit. There is a limit to that decrease in expense.

But I would not say there was a limit to the decrease in the revenue.

Q. What looks wrong to me is that the haul may be 1050 miles outside of the state, and 105 miles inside of the state, and you compare with your 105 miles, and eliminate nine-tenths of the whole haul.

A. No sir, pardon me.

Q. Why don't you?

A. That is what you wanted to do this morning when you wanted to make your comparison on the ton basis. Then you were comparing a ton hauled 105 miles with a ton handled 50 miles. But when I reduced it to per ton per mile, I get a common unit which permits an intelligent comparison, in my judgment.

Q. What would you give as the total terminal charge?

2188 A. I estimated it roughly, speaking of the originating and terminating terminal, from seven to ten cents per ton.

Q. Calling it ten cents, to make it in round numbers, the longer the haul, the more that is distributed?

A. Yes, sir, there is no question about that.

Q. Take it for a haul of one hundred miles, that would be what?

A. One tenth of a cent per mile.

Q. Suppose it went one thousand miles, what would it be per ton per mile for the distribution of that item alone?

A. That one particular item would be one one-hundredth of one cent.

Q. Does it make the same difference about the distance you go, about working out that expense per ton per mile?

A. Not in the revenue. You were talking about revenue in Exhibit 19. It does in the expense, up to a certain point. But there would be very little decrease per ton per mile in the expense of a shipment that went one thousand miles, as compared with a shipment that went, say, two hundred miles.

Q. Let us go back for a moment to Exhibit 23.

A. Think there is a limit to your decrease of expense, and when you take into consideration only that originating terminal, you take only a feature of the cost, because that interstate shipment going one thousand miles, if you please, is running into another terminal every one hundred miles; and, while that terminal expense is not as great as that of the originating or terminating terminal, it is still a large item.

2189 Q. That is a question of the comparison of amount; but as between two fixed terminals, which you distribute over the system, it does seem to me that the entire vice of your comparing expenses in the manner in which you do, lies in the fact that you do not recognize that the longer your haul the more you distribute per ton per mile, and lessen the cost on the interstate shipment.

A. I beg your pardon, Mr. Hagerman, but we do, in exhibits we we have prepared. We allow for all that. And we make, what we consider, according to our judgment, a very liberal allowance.

Q. I will take, then, instead of your ten cents that we used for purposes of illustration, five cents, as the extra cost of these fixed terminals, for what it would be over your interstate shipment. That five cents would be apportioned in the same way. When it went on an interstate shipment, going one hundred miles, it would be how much? One tenth of that?

A. One one-hundredth of that.

Q. Take it for ten miles first. What would it be for that?

A. It would be one-tenth of that for ten miles.

Q. And it is distributed into one one-hundredth part, if it went one-hundred miles?

A. Yes, sir.

2190 Q. Now let us see if the question of distance does not enter into the rate: Isn't it the whole theory of the Act of 1905 that the longer the haul, the less the rate per ton per mile?

A. Yes sir.

Q. Does not the question of distance enter into the question of rates?

A. Unquestionably.

Q. I am trying to get at it without any estimate or assumption that it costs more: But, whatever there is in the way of fixed terminal expenses for an interstate shipment, that is disturbed, as a practical result, on the per ton per mile basis, in accordance with the number of miles carried?

A. Unquestionably.

Q. And the longer the distance, the less per ton it costs?

A. The less per ton per mile for the originating terminal expense; after a certain distance I would not say they would increase.

Q. Up to a certain distance?

A. Yes sir, up to a certain point: I concede that. I have made that statement.

Q. I think you will concede anything that is fair, if you think it is fair.

A. I make the statement. I did not mean it as a concession.

Q. I am dealing with you as an honest man, only trying to express your opinion; and when we get through we will know what our differences are.

In that way you have distributed your extra terminal cost, whatever it may be, and reduced it in accordance with the number of miles run?

A. Yes sir.

2191 Q. Now let us get down to the question of comparison, because I am simply dealing with it from the standpoint of a fair way to compare the rates.

Your system of simply arriving at the per ton per mile is a system of averaging and placing practically everything on a level, isn't it?

A. Well, that is one way of expressing it.

Q. Isn't that a fair way of expressing it?

A. Hardly.

Q. You do not distinguish between the commodities?

A. I would say, I think rather it reduces it to a common unit that permitted of intelligent comparison.

Q. You call it "common unit" and I call it "reducing thing by a system of averages to a common level," and in ordinary parlance that expression is not for out of the way, is it?

A. I like my own better.

Q. I can understand mine better, is all.

Now the result is, that when you do reduce it down to the ton per mile you have taken and averaged all the commodities regardless of their character. You have simply had the number of miles and the number of tons hauled and out of that you get an entire average, don'- you?

A. With the exception that we separate of course state and interstate, and carload and less than carload.

Q. I know that is a subdivision you make, because in each

2192 class you find out the same way, whether carload or less than carload, and whether state or interstate. What you do as to the commodities, regardless of the character of the commodities, regardless of the rates you get on the commodities, what you do is to get the total number of miles, the total number of tons, and the total amount of revenue received?

A. Yes, sir. What we try to do is to reduce the interstate carloads to a unit that permits of comparison with the state carloads. And the same way with the interstate less than carload and the state less than carload.

Q. But after all, it is adopting an average regardless of the commodities, regardless of the difference in the amounts you receive, isn't it?

A. Of course that includes all the carload shipments in the interstate business and it also includes all the carload shipments in the

state business. In other words, it puts all the carload state business down to one figure and all the interstate carload business down to another figure.

Q. Let us take it with that limitation, because that is the way you prepared your statement: you have subdivided between carload and less than carload and between state and interstate?

A. Yes, sir, but the point I want to make is this: whether it is inequitable, if you please, to compare all the carloads, or to reduce all the carloads to one unit, it becomes equitable when the same system is followed in both state and interstate, for the reason that the same variation will exist between the carload business in each class of business.

2193 Q. To make my statement more specific, in less than carload you are ascertaining for state business and also for interstate business, the rate you received per ton per mile, and that reduces things to a common level upon the basis of an average, regardless of the character of the commodity that is carried, doesn't it?

A. You mean both state and interstate?

Q. Yes. Regardless of their character.

A. To a common unit, regardless of the character, in both state and interstate.

Q. And regardless of the amount received on one particular commodity as against another. That is not taken into consideration, is it?

A. I think it is to the extent you will find both classes of commodities in both the state and interstate. The state does not have one particular class of commodities and the interstate another particular class of commodities, but they both average the same.

Q. But let us confine ourselves to less than carload lots. The fact that upon wheat you get one price and upon some other commodity you get another amount of revenue, that is not taken into consideration in your calculation at all?

A. That is not a very good illustration of less than carload lots.

Q. Well take something else. Any commodity you want.

A. Take coffee and drygoods. You will find both coffee and drygoods in carloads and less than carloads.

2194 Q. Certainly. But reducing it down upon one commodity you get a higher rate than upon another. That does not enter into it, except you have the sum total received?

A. On both classes, yes, sir.

Q. So you said before, in reducing to a ton mile basis you did not take into consideration, in this system of averages, the amount of waste space in the car, did you?

A. Not in either case.

Q. The ideal way, Mr. Ludlam, if it were practicable, or if the railroads kept their accounts that way, with this lawsuit in view, would be to keep track of each car, so as to have the kind of commodity and the vacant or unused space in the car, wouldn't it?

A. Yes, sir.

Q. That would be the ideal way?

A. Yes sir.

Q. And without that we have all this system of averages and theorizing?

A. Now right there, I would like to say, that the same ratio of difference, however, must exist in each class of commodities, that is shown by the total of all the commodities in each class. That is to say, that if the less than carload state averages twice as much per ton per mile, there must be a preponderance of the articles that are carried in less than carload business both state and interstate, that average higher proportionately in the state business than they average in the interstate business.

2195 Q. In the final analysis, what we get down to, when you figure it your way, it is a system of averages, depending largely upon theoretical calculations, isn't it?

A. It is reducing the business to a common unit, upon an absolute tabulation of the transactions of the company. It is not theorizing in any sense. It is getting just as far away from that as possible.

Q. It is calculating upon a system of averages without taking the actual facts into consideration?

A. It takes all the actual facts into consideration. The amount hauled, the weight, the distance hauled and so forth.

Q. You have just said you did not take those things into consideration.

A. If I did, I made a mistake——

Q. Let me get back to that.

A. Let me explain that, please. What I said was not taken into consideration, is the waste space.

Q. Let me see if the other thing is not true, because I did not think we misunderstood each other. We may differ as to what would be the right method of comparing.

Given the number of tons of less than carload freight; the number of miles that the less than carload freight was carried; the lump sum of money received for all less than carload freight, you could get your calculation upon the basis that you figure it without any other consideration; and that is the only way you get it?

2196 A. And a separation into state and interstate.

Q. Then I will separate my question: in the state freight given all the tons that there are of less than carload freight, the total number of miles that the less than carload state freight has been carried, and all the money in a lump sum, without any division, that you have received for the less than carload state freight, your example is just one of division, isn't it?

A. Yes, sir. You get the average rate per ton per mile of state less than carload business from those figures.

Q. Is there any difference between us? That you did not, in arriving in your calculation, take into consideration the commodity or the lost space occupied in one car than in another. Does that enter into the calculation?

A. The space does not.

Q. Does the other thing?

A. The weight does.

Q. Only in the total number of tons?
A. Only in the total number of tons.
Q. That is as far as it goes?
A. Yes, sir.
Q. Now coming back to my original question with all this light before you, your opinion still is, notwithstanding you arrive at it in that way, it is fair, upon that theory, to compare the revenue received from the interstate as from the state freight; and you ought not to compare, based upon extending the state rates for a similar distance, as to what you receive?
A. My judgment is that the comparison should be made upon the revenue per ton per mile.
2197 Q. Now turn to Exhibit 28: what is the theory upon which Exhibit 28 is based? That is supposed to represent what?
A. That is supposed to represent what the cost per ton of interstate freight is, based on figures shown in the Missouri Pacific Railway Company's Analysis of Statement of Superintendent's Operation for the year ending June 30th, 1906, which includes the operation of the Missouri Pacific Railway proper, the Iron Mountain, and the Central Branch, on an average haul of one hundred and five miles, provided the average terminal expense was 17.92 cents; and, in the first column, provided the train and engine service cost the same per ton per mile on both state and interstate business.
In the second column, provided the train and engine service cost twice as much per ton per mile on state as on interstate business.
And in the third column, provided the train and engine service cost three times as much per ton per mile on state as on interstate business.
Q. When you speak there of the Analysis of the Statement of Superintendent's Operation, you are referring to one of these forms, Exhibit what?
A. We are referring to both of these forms, Exhibits 26 and 27.
Q. Forms 1940 and 1941?
2198 A. Yes, sir.
Q. And the purpose of this Exhibit 28 is to show, upon a theory which you advance, the cost of operation as to the interstate freight, and Exhibit 29 as to the state freight, in Missouri?
A. Based upon these two exhibits?
Q. Yes.
A. Yes.
Q. The first thing you take as a basis is the analysis of the Statement of Superintendent's Operation for the entire system?
A. Yes, sir.
Q. If that does not fairly represent Missouri, all this calculation is wrong?
A. To that extent, yes.
Q. You have not separated from Forms 1940 and 1941, and could not separate from them, the statement for the state of Missouri?
A. No sir, they do not give the figures for the state of Missouri.

Q. You have got to take that cost as applied to the particular items mentioned in each one of these exhibits, that cost as you ascertain it in that analysis, for the entire system that is the first thing you must take?

A. In an analysis of the entire system, as shown in these exhibits.

Q. The items of expense are as you have listed them here (indicating)?

A. Yes, sir.

2199 Q. The cost is based entirely upon what is shown by this statement as to the entire system?

A. Yes, sir.

Q. You stated repeatedly during your examination that the question of revenue does not enter into this thing at all?

A. Absolutely not at all, into the question of cost, it has not the slightest relation to it.

Q. The cost should be ascertained in the best way possible?

A. Yes, sir.

Q. The ton mile is not the question; the revenue is not the question; the thing to be desired would be to ascertain the actual cost, if you could ascertain it in any way?

A. In our judgment, the ton mile basis is the only way in which you could ascertain it.

Q. You started to ascertain it on the ton mile basis?

A. We tried to do so.

Q. But on that basis, and with your figures, wherever you get, we have to double the figure with which you multiply, every time, to get you even upon that basis with us, upon the ton revenue basis, don't we?

A. Yes, unquestionably.

Q. Why is that so?

A. If you earn twice as much upon one ton of freight, which is state freight, as you do upon another ton of freight, which is interstate freight, if you want to show that the relation of cost to revenue is the same in both cases, you have immediately got to assume that the state business costs twice as much as the interstate, in order to get even.

2200 Q. Now, then let us take it upon the tons, because it does strike me that besides being a simple way of arriving at the result, it is a little remarkable that when you deal with the thing upon the question of tons it comes out just the same, for practical purposes, as when you deal with it on the question of revenue; and yet your multiple has to be doubled when you deal with it on the ton mile basis.

A. It would not be strange if you keep in mind that the revenue is as much, and the haul only one half as much.

Q. I am giving you the question irrespective of revenue, where you have the total number of tons carried, state and interstate.

A. I said——

Q. I will state in passing that in my mind the two ways you have figured it out come out practically the same; and with the other way, your way of figuring, it comes out only one-half?

A. As a general proposition, there are a great many wrong ways, and only one right way to do a thing.

Q. I understand your proposition, as to why it is double in the case of revenue, but why in the case of tonnage?

A. Why is what double in the case of tonnage?

Q. In the case of tonnage, if we divide the expenses on the basis of tonnage?

A. Because the state tonnage moves only half as far as the interstate tonnage.

Q. That is the sole reason?

A. Yes, sir.

2201 Q. Go along with your Exhibits 28 and 29 they are gotten up on the basis that the cost in Missouri per ton is based on the average cost on the whole system, which includes the Iron Mountain and Central Branch railways?

A. I would express perhaps the same idea by saying that they are gotten up to show what the results in the state of Missouri would be, if the cost in the state of Missouri was the same as it is on the entire system.

I would like to say right here, though, that if the portion of the Missouri Pacific system which lies in Missouri is as well operated as the system as a whole, the cost in Missouri, in my judgment, should not be as great as on the whole system, for the reason that the density of traffic is greater in the state of Missouri than it is on the system as a whole.

Q. Now, let us test it: Take your Exhibits Forms 1940 and 1941: what is the cost per ton, or per ton mile, on the whole system? Maybe you can answer that without following it out. As a matter of fact, isn't the cost in Missouri about forty per cent higher than on the entire system?

A. I have not worked it out. I cannot imagine it should be.

Q. Isn't the average cost per ton upon the items shown by Forms 1940 and 1941 about 4 mills, as against a cost of about 6 mills on the same items in Missouri?

A. As shown by what, for Missouri?

2202 Q. I am just giving it roughly from a note I had. I thought you might make some classes of those items and make a rough comparison quickly. What is the total cost per ton per mile, on that form, for the system?

A. Four and one-half mills.

Q. Now what is it on the Joplin division for Missouri: Isn't that shown by this Exhibit Form 1940?

A. No, sir.

Q. Have you that anywhere?

A. No sir.

Q. Look at this Form 1940, sheet 1: what is it for the Joplin division?

A. 6.4 mills.

Q. As against 4½ mills for the entire system?

A. Yes sir.

Q. Am I far out of the way when I say that the cost for Missouri

would be about 40 per cent, as against 4½ mills for the entire system?

A. I think you are.

Q. What difference would it make in your figures?

A. I don't know what would make the expenses so high on the Joplin Division; and I wouldn't think the Joplin Division would be a fair representation for Missouri.

Q. The Joplin Division is all in Missouri; that is the reason I took it.

A. The biggest variation I see, just looking at this sheet hastily, between the expenses of the system as a whole and the expenses of the Joplin Division, is in the General Expenses; the general expenses of the Joplin Division being more than double what they are on the system as a whole. Of course, that would apply equally to
2203 state and interstate freight.

Q. Take the Illinois Division?

A. The Illinois Division, as shown here, is 2.7. What does the Illinois division embrace?

Q. It is the Iron Mountain on the east side, St. Louis to Thebes. What is the eastern division there for the Missouri Pacific?

A. May I ask what the eastern division is?

Q. It is from Kirkwood to Rock Creek, and takes in no terminals, either at St. Louis or Kansas City.

A. 3.5. I might say, in explanation of the reason why we did not attempt to use the figures of the different divisions, as shown by these Exhibits 27 and 28, was because we understood from Mr. Johnson that the division figures did not include the terminal expenses; and that in order to get the terminal expenses, we had to take the figures of the system as a whole.

Q. That applied only upon the eastern division, and a like division, where there would not be any terminals, like St. Louis or Kansas City. That is not so as to the rest of the figure.

But what I am driving at is, that you have made a calculation based upon figures for the entire system, when you should have made it based upon figures about 40 per cent higher, should you not?

A. No, sir; I have already explained that I think the expense in Missouri should be less than upon the system as a whole.

2204 Q. I am not talking about what they ought to be, but what they are.

A. I don't know, then, what they are.

Q. You say they are what they are?

A. I say, for the eastern division it is only 3.2. It is much less than for the system as a whole.

Q. Take the St. Louis division, St. Louis to Kansas City: what is it for that division?

A. There is no such division.

Q. What division comprises the lines running across the state: did you take the figures as to that?

A. No, sir. We understood from Mr. Johnson that the terminal expenses were not included in those division expenses, and the only figure you can get that embraces all the expenses is the figures treating the system as a whole, and that is why we took it.

Q. You took it from the statement that his figures figured out upon the same basis as these figures?

A. No sir: just as Mr. Johnson told you just now, that the eastern division, which starts at Kirkwood, did not include the St. Louis terminal expenses.

Q. Of course, not, because the St. Louis terminal expenses would be in that division of the road.

A. What division? I wish you would show it to me on this statement.

Q. I don't know which it is.

—. Then Mr. Johnson, or any one else connected with the
2205 Missouri Pacific road.

Q. Take Form 1939, and it will show it.

But the Point I am making is, you can take this statement and figure out the cost per division, and you have taken the average for the entire system, which is on the basis of 40 per cent less than the cost in Missouri, and based your figures on that?

A. We took the only figures that we understood were available and reliable, and that meant anything.

Q. Form 1939 gives all the St. Louis terminals, and the Kansas City terminals, as separate divisions, doesn't it?

A. I do not so understand.

Q. Look at Form 1939, the first sheet, and that has been the testimony in the case as to the Kansas City terminals, that they changed it some time ago, and made it a separate division?

A. I see no figures here per ton mile, Mr. Hagerman. Nothing that would enable us to apply it.

Q. You have on the other sheets the number of ton miles, and you have on the sheets in different details all the expenses for the divisions, and for the system; and you have on this sheet all the expenses of those terminal divisions. Of course, there would not be any ton miles there, because there would be none run.

A. There are no ton miles shown for the state of Missouri on those exhibits. Certainly you could not take the ton miles of the eastern division, which does not embrace St. Louis, and apply that against the terminal expenses.

2206 Q. Let me deal for a moment here with the station and yard services: That is an expense just like the general expenses conducting of transportation other than traffic; maintenance of buildings and side tracks: Where the length of the haul has no bearing on it, isn't that true?

A. To some extent. It is not wholly true, I do not think.

Mr. HAGERMAN: Let us take the question of station and yard service: There is a fixed expense there: Isn't there?

A. Yes sir.

Q. Dealing as you say from the standpoint that the expense must not be coupled with revenue in any way whatsoever, what does the length of the haul have to do with the station or yard service?

A. Well, I should imagine, Mr. Hagerman, and I think even an amateur could realize that, that a car going from New York to San Francisco would use a great many more yards and have a great

many more expenses than a car going from St. Louis to Sedalia. Therefore, I should think the length of the haul would have a vast amount to do with the yard and station service.

Q. I can see how it would be possible, taking the State of Missouri, running clear across the state and running across several divisions, the fact that it crosses those divisions would cut some figure; but when we do not get the use of any of the terminals at the division, what difference would it make whether the car went from Pacific Junction to East St. Louis, or went from Pacific Junction to Alton, Illinois: They would cross the division point once.

A. In the State of Missouri.

Q. In the State of Missouri they would cross once?

2207 A. Yes sir, and in that case the terminal expense of the state and interstate would be identical.

Q. Give me another divisional point, out in the center of the state, Jefferson City, for instance.

A. Yes sir.

Q. What difference does it make whether the haul started at the first station west of the eastern division point and stopped at the first station east of Sedalia, next to the division point; or, whether it started at the closest point east of Jefferson City and stopped at the closest point west of Jefferson City?

A. I do not think it would make any difference. I might express that by *anything* that where a movement was within the terminals, there would be no difference in the cost.

Q. Regardless of the difference in the haul?

A. Yes sir, provided it was within the terminals.

Q. And yet you make an iron-clad rule upon your basis of calculating the cost upon the ton mile basis, which must result in dividing my figure we make into two, because of the difference in the average length of haul, don't you?

A. No, sir, I double the terminal and yard service in estimating state expense, because the state freight moves only half as far as the interstate.

Q. Per ton per mile?

A. I double it per ton per mile because it moves only half as far.

Q. Take general expenses: What difference does the general expenses make, whether you run the train ten miles or one hundred miles?

A. I don't think it makes any difference per ton per mile.

Q. Then why ought the ton per mile basis to be applied to an expense of that kind?

A. Because I think that is the surest basis you can apply.

2208 Q. Mr. Ludlam, according to Exhibits 28 and 29 you have had figured out that it costs a good deal more to do the interstate than to do the state business, instead of the converse, haven't you?

A. Not per ton per mile, no sir, but per ton.

Q. But you figure out on the ton per mile basis?

A. Figured on the ton mile basis?

The MASTER:

Q. That introduces another complication: What do you mean by "per ton figured on the ton per mile basis"? I understand the term "per ton", and I think I am beginning to learn something about "per ton per mile", but I do not understand about "per ton figured on the ton mile basis:" Now what is that?

A. Exhibits 28 and 29 take as their basis the cost per ton per mile. Then in the case of interstate we multiply the cost by 105, because the interstate moved on the average 105 miles, to get the cost per ton. That gives you the cost per ton of the interstate based upon the per ton per mile cost.

In the case of the state we get the cost per ton per mile, and as that moves on the average 52 miles in the state of Missouri, we multiply the cost by 52 to get the cost per ton, which gives us the cost per ton based upon the cost per ton per mile.

2209 But in making those calculations we figure that the station and the yard service is the same per ton, irrespective of the difference.

You will see in Exhibit 28 and also in Exhibit 29 that we use 17.92 cents as the cost per ton for station and yard service, which is the figure shown by Exhibits 26 and 27, the Company's statement of analysis of superintendents' statement of operation.

Then in the case of train service, engine service, on these statements, we double that cost in one instance and treble it in another instance.

Q. What you mean by the ton, based upon the ton mile, is that the ton mileage has been reduced by the tons?

A. Yes sir.

Q. What was the necessity of that calculation, when you could ascertain the cost per ton by dividing the number of tons into the cost?

A. Because the two classes of freight move different distances. You have to get the cost per ton per mile as your unit. You could not take, according to Mr. Hagerman's illustration, the average of one thousand tons of freight that moved one mile, and one thousand tons that moved one thousand miles each, and say that two thousand tons were moved, and therefore divide 2000 into the expenses, because that would assume it cost as much to move a ton a mile as to move a ton 1000 miles.

You first determine the cost per ton per mile, and then make your calculations upon the average haul of the two classes of freight.

2210 Q. If I knew the number of dollars I received for transporting so many tons of freight, I would know the cost per ton.

If I knew the number of miles that freight moved, I could readily determine the number of ton miles.

What necessity for complicating that by reducing it back to ton miles?

Mr. HAGERMAN: Take the number of tons, or simply the first

example, you would divide your expenses upon the basis of charging 25 per cent in the first instance, on state business, but it would be only 14 if you applied to it the test of the ton mile basis. Therefore it is a confusion of terms, and so you are figuring it out upon the ton mile basis.

Mr. LADD: Let Mr. Ludlam answer the Master's question.

The MASTER:

Q. What is the necessity of introducing that extremely complicated calculation?

A. The necessity to my mind seems to be very urgent. If you take your total number of tons and divide it into your total expense, you assume right at the start, that it costs the same to haul a ton 52 miles, which is the average distance the state freight moves, as it does to haul a ton of freight 105 miles, which is the average distance the interstate freight moves.

You would start immediately on a false premise, if you simply divided the number of tons into the expenses.

2211 Just as I attempted to show in my illustration, it does not cost the same to haul a ton of freight one mile as it does to haul a ton of freight 1000 miles. You must reduce it to a common unit, and after you have obtained that common unit, which is so much per ton per mile, you can say this first ton was moved a mile and at that cost per ton per mile it would be so much. The second ton was moved that much, and at that cost per ton per mile it would be one thousand times that much.

You cannot simply divide your tonnage into your expenses when your elements are entirely different, one being more than double what the other is.

You must get down to a common unit to get a basis that means anything. You might as well say you could run a grocery store and sell kerosene and apples, and that you could take the total number of barrels of each you sold to find out what you realized from your kerosene and your apples, though they are entirely different articles.

One goes 52 miles and the other goes 105 miles.

Mr. HAGERMAN: In preparing Exhibits 28 and 29 why did you start with the cost per ton per mile without going into the other?

A. Because we did not want to stop off-hand and we wanted to carry it out to a conclusion that really meant something.

Q. You don't mean to say that either of these Exhibits represent, even upon the theory you produce them, of a cost per ton?

2212 A. Yes sir, in my judgment they are a very close approximation to the cost per ton.

Q. Ascertained upon the basis per ton per mile?

A. Ascertained upon the only unit that is known in the railroad business, that means anything.

The MASTER:

Q. How does the result per ton compare with the primary result obtained in the manner I indicated a moment ago? There

are other figures outside of that Exhibit entirely. The total cost compared with the total number of tons. How does it compare?

A. This makes the cost on the basis of the train and engine service being the same, as shown in the first column of each of these two Exhibits 28 and 29 respectively 57.9 cents per ton on the interstate freight, and 37.7 cents per ton on the state freight.

Whereas, if you simply divide it by the number of tons, the cost would be identical. If you have your total number of tons and divide it into your expenses.

Q. Take the amount of state freight and interstate freight that you have, from other Exhibits, and what is the cost per ton outside of this Exhibit, and how does it compare with this Exhibit? Some of the Exhibits show that.

In other words, whether the cost per ton figures strictly, about or comparatively near, what it figures out in this intricate manner.

A. On the basis of Mr. Hagerman's request a moment ago, taking the expenses as shown by the Company's Exhibit 5-a, and dividing it by the number of tons, the expenses amounted
2213 to about 66¼ cents per ton for all state and interstate, carload and less than carload freight.

The total cost in the state of Missouri was 66¼ cents.

The cost here of the interstate is 57.9 cents, and of the state 37.7 cents per ton (indicating Exhibit).

Now of course the state is only a small proportion of the interstate freight, therefore the cost of both together on this basis would be reduced just about as much as what we consider the excess charge on the Kansas City terminals amounts to.

Mr. HAGERMAN:

Q. And yet that excess does not enter into the figures at all?

A. The excess cost to Missouri.

Q. That is just an accident, because it does not enter into your calculation in any way.

A. No sir, it is not an accident. It is a mathematical calculation, because in these Exhibits 26 and 27, prepared by the Company, the expenses are properly distributed over all the business of the Company, and not all of the Kansas City terminals charged to the State of Missouri.

2214 The MASTER:

Q. Did you deduct the Kansas City terminal expense, or the proportion that should have been charged to Missouri, in the preparation of those two exhibits?

A. Those two exhibits are based entirely, as stated in the heading, upon the cost per ton mile of the entire system, as shown in Exhibits 26 and 27, which are the forms showing the analysis of superintendents' operations. These are not based upon the figures by the company for the State of Missouri. These are based upon the cost on the system, as a whole, on the mileage in the State of Missouri, as shown by Exhibit 14.

Mr. HAGERMAN:

Q. In your Exhibits 28 and 29, in the tabulation of figures, do you endeavor to include there all the items that were included in "Conducting Transportation," in our Exhibit 5-a?

A. We included all the operating expenses shown by Exhibits 26 and 27, which we assume are all the operating expenses of the company, the same as shown by Exhibit 5-a.

Q. Under the head of "Conducting Transportation," that is to say, excluding taxes, rentals, and interest?

A. Yes sir; shown under the head of "Operating Expenses," in Exhibit 5-a.

2215 Q. Your idea is, that there is not more money made on the long haul business than on the short haul?

A. No sir, not per ton per mile.

Q. I am not talking about per ton per mile.

That is one of the differences between us. We have a property here upon which we must have a return. That is what we are looking after. You may be wrong, and I may be right, or I may be wrong, and you may be right, as to how to ascertain that. So you do not aid us any when you say "per ton per mile."

A. I cannot compare it in any other way.

Q. The only way I can compare it is by way of the investment.

A. I don't think you could.

Let me ask you, to illustrate, to show you that you couldn't.

A shipment from St. Louis to St. Charles, of a ton of freight, you would not expect the railroad company to make as much profit as on a ton of freight from St. Louis to San Francisco. Therefore, while you might say they made more on the long shipment, they ought to, because it is days in transit, and is going thousands of miles.

You must reduce it to a unit, to permit a comparison which will mean anything.

2216 Q. But every time you are asked a question of whether it costs more, or the revenue is more, you add to it the phrase, "per ton per mile."

A. Yes sir.

Q. That is just a method of ascertaining the thing, isn't it?

A. Yes sir.

Q. What I want to know is, whether in the light of your experience you would undertake for one moment to say that upon the money invested in the property, more money is made upon the state business, or the short haul business, than there is upon the long haul business?

A. I will answer that by saying that in my judgment, after a very careful study of the situation, the Missouri Pacific Railroad made more actual net revenue out of the one and a half million dollars of state freight business than they did in the year 1904, and the same amount in the year 1905, than they did out of the four million and odd dollars of interstate business?

Q. That is regardless of how you ascertain it?

A. Yes sir.

Q. Regardless of "per ton mile"?

A. It is not regardless of how you ascertain it, because I spent an immense amount of labor to reach that determination.

Q. Let me come back to the question, because if it takes a week I am determined to get your best judgment about it.

A. I am willing to give it.

2217 Q. You may he right, or I may be right, but in the end, the question is decided by the investment and the returns upon it. Do you say, taking it altogether, and regardless of how you arrive at the result—that the short haul business is preferable, and more revenue is made out of it, than out of the long haul?

A. Per ton per mile——

Q. No sir, irrespective of the per ton per mile. That is a theory. Irrespective of that, and just as a general proposition?

A. I can not compare it, unless you have a whole state. Take Missouri: I have compared Missouri, and have told you that in my judgment they have made more actual money out of the one and a half million dollars of state business than they did out of the four million dollars of interstate business. That is my very best judgment.

Q. Regardless of how you estimate it?

Mr. LADD: He told you how he gets at it.

Mr. HAGERMAN: I don't know, and I shall not desist until the Master stops me. The witness cannot dodge the question of giving me his best judgment upon the matter.

Upon this property, or any other railroad property in Missouri——

Mr. LADD: It is hardly fair to Mr. Ludlam to say he is trying to dodge an answer.

Mr. HAGERMAN: He puts his theory in every time.

The MASTER: The difficulty is this: Mr. Ludlam repudiates any other theory, in arriving at the judgment he has reached, than

2218 the ton mile. He will not admit the possibility of arriving at it in any other way; therefore, he puts in the only theory he has.

Mr. Hagerman, you may put the question without respect to his theory, and if he can give an answer, without respect to the only theory he has, he may do so.

Mr. HAGERMAN: I understand, Mr. Ludlam, and I am not criticizing him for exercising his judgment. He is entitled to do it, just as much as I am entitled to exercise mine, and you yours in the end. But this is the question I wish to ask him:

Eliminating the ton mile, what do you say about that?

A. I would not express any off-hand opinion as to the relative cost or the relative profits of the two classes of business, except as the result of mathematical calculation which I made. I have seen too many opinions expressed in this case that were in my judgment altogether wrong, to care to express just an off-hand opinion.

The opinion I have expressed is based absolutely on the figures

we have made, and the study we have made, and the work we have done, in this case, and it is all predicated on the per ton per mile cost.

Q. And, unless you can predicate it upon the per ton per mile basis, you have not any opinion to express?

A. I would not care to express an opinion, except it was worked out on the most reliable and scientific basis that would be obtained.

Q. You have not, and did not intend to express any opinion whatever, except it is based upon the per ton per mile basis; Am I right about that?

A. Yes sir, you are right.

2219 ST. LOUIS, Mo., *March 5th*, 1907.

At the request of Counsel, the hearing is postponed until Wednesday, March 6th, 1907.

ST. LOUIS, Mo., *March 6th*, 1907.

Met, pursuant to adjournment as above, on Wednesday, March 6th, 1907, at ten o'clock A. M., in the Federal Building City of St. Louis, Missouri.

Present: Hon. F. L. Schofield, Special Master.

Mr. Frank Hagerman appeared in behalf of the Complainant.

Messrs. S. B. Ladd and John Kennish appeared in behalf of the defendant.

The following proceedings were bad.

Cross-examination of C. S. LUDLAM, continued, as follows:

By Mr. HAGERMAN:

Q. Exhibits 28 and 29 were gotten up on the theory, first, that the first column, headed "Single Cost", was based on the figures taken from Form 1940 or Form 1941?

A. Yes sir. I would like to say there, that both of those forms 1940 and 1941, being Exhibits 26 and 27, include the Company freight; whereas Exhibit 19 and Exhibit 5-a relate to revenue freight only.

Q. But Exhibits 28 and 29 would include the Company freight?

A. Yes sir.

Q. Then you take the different items, under the heading of "Single Cost", in the first column, and give the cost ascertained upon the basis of Forms 1940 and 1941?

2220 A. Yes sir.

Q. And then you apply your multiple to such portions of the items as you think there ought to be an allowance for increased cost, and for nothing more: isn't that the theory upon which you have gotten it up?

A. I allow an increased cost on the items of "Train Service" and "Engine service".

Q. But on nothing else?

A. But on nothing else per ton; although I apply the same cost for station and yard service to both the state and the interstate.

Q. I understand that: But before I get now to the difference in mileage: you take, of the items constituting "Conducting Transportation" those that cover train and engine service, and allow an increased cost on state over interstate on account of these items?

A. Yes sir.

Q. But on nothing else?

A. Well, I think I would say there was an allowance for increased cost of station and yard service, inasmuch as the same figure is used in both cases, and the mileage is different.

Q. Which is the item of train and station service—that is the first one?

A. Station and yard service is one.

Q. That is the first item in Exhibits 28 and 29?

A. Yes sir.

Q. That same figure seems to have been carried through where you double the cost of doing the state business, and where you treble it?

A. Yes sir.

2221 Q. Therefore I assume you did not apply, in your judgment, any increased allowance on that item?

A. No sir. That item was the cost per ton, without regard to the distance hauled.

Q. Why do you, as to one of the items, put it as to the average cost per ton, regardless of the distance hauled, so as to make it the same in both cases; and then as to the other items, in every one of them, use the per ton per mile basis?

A. Because we think the tonnage would be a more correct basis for the first item, and that the per ton per mile would be the more correct basis for the rest of the items.

Q. Separating the two for the first item, at least for station and yard service, you think it would not do to take an item like that and deal with it on the per ton per mile basis, in any way whatsoever?

A. I think the basis of the number of tons is fairer.

Q. And you do think the per ton per mile basis ought not to apply to station or yard service?

A. Not to the same extent as it would to the other items although I do think the station and yard service is greater for the long haul than it is for the short haul.

Q. You have gotten these statements up on the theory that, as far as station and yard service are concerned, there should not be any calculation made on the per ton per mile basis, haven't you?

A. I would not say I had gotten these up on the theory that they should not be, but rather on what the results would be if there was no extra allowance.

2222 Q. You did get them up on the theory that there should not be any extra allowance?

A. Yes sir.

Q. And you did that because, as you said a moment ago, you thought it would be fairer?

A. Yes sir.

Q. What do you say as to the maintenance of way at terminals,

and maintenance of structures, and equipment: would not the same rule apply?

A. No sir, I don't think so.

Q. What difference would you make in that case?

A. Because the tracks at the terminals are more in proportion to the length of the haul, than the station service or the yard service.

Q. Would that be so as to the buildings?

A. No sir, I don't think it would.

Q. That is, the average cost per ton, as distinguished from tons mile-, would be the fairer basis, as to that?

A. Yes, sir, I think it would, although, *if* course, in that connection you will have to consider the fact that taking the less than carload business as a general proposition, the further it goes the more often it would be transferred, and the more it would use those buildings.

I might say in that connection, that the printed report of the Company——

Q. You mean the Annual Report?

A. No sir. Sheet No. 7 of Form 1939 shows that — the total maintenance of way and structures expenses during the year end-
2223 ing June 30, 1906, amounting to $5,378,125.37, only $342,-796.02 related to maintenance of buildings and grounds.

Q. So far as the maintenance of buildings and grounds is concerned, you would say the same thing as to this first item, that would be on the per ton basis, as distinguished from the per ton mile basis?

A. Yes sir, I think that would be a fair way.

Q. That is all I am asking for.

Taking the question of taxes, would you deal with taxes in the same way?

Of course, you do not treat, in your exhibits, at all of taxes as expenses, but I am assuming now, on our side, that it is an expense. If you were going to deal with it, what would you say about that? Would it be fair to deal with it on the basis of per ton, or per ton mile?

A. I should say, off-hand, it would be fair to distribute that on the basis of ton miles. But before expressing that as a definite opinion, I would want to study somewhat the tax laws in this state.

In some states—I am not sure it is so in this State—the question of earnings is an element that is considered when taxes are assessed. And in the case of franchise values that would be particularly so. If that entered into the taxes assessed in the States of Missouri and the earnings were greater per ton on the state freight, or per ton per mile on the state freight, then it would probably be fair to
2224 assess a larger portion of the taxes to the state freight.

Q. Notwithstanding that a portion of the taxes might be charged upon these very things, it would be fairer to estimate the average cost per ton as distinguished from ton miles, still your judgment would be that upon the taxes it should be measured in accordance with the haul?

A. There are no items, I believe, upon which I said it would be fairer to assess upon a ton mile basis, that would relate to taxes ex-

cept maintenance of buildings; and that would be such a small proportion of the whole that it would not cut any perceptible figure either way.

The main item which I said I thought it would be fairer to distribute on the basis of the tonnage rather than the ton miles, is the station and yard service expense.

Q. That you have already allowed for, in your Exhibits 28 and 29?

A. That is mainly labor and supplies, and would not be subject to taxation.

Q. I would say that if you had any right to set aside the station and yard service on that account, the things which were used in that station and yard service ought to be based in the same way; you won't go that far, will you?

A. Hardly that far, because, as I have said before, those tracks in the terminals, and the buildings in the terminals, are used more the further the business goes.

Mr. HAGERMAN:

Q. Assuming that we are to make a distribution of interest on the bonded indebtedness, wouldn't you say the fairer way would
2225 be to distribute the proportion that applied to these fixed items, where you say it ought to be ascertained upon the cost per ton, as distinguished from the cost per ton mile, and should apply to that?

A. Yes sir, in the case of those items where I say it would be fairer to apply it on the per ton, rather than per ton mile, I would say the interest, where it relates to those items, should be correspondingly distributed.

Q. That is to say, wherever it is interest upon those items where you said you would use the per ton, as distinguished from per ton mile, that interest should be applied likewise?

A. Yes sir.

Q. So the result of all this distribution is, according to your judgment, the expenses as to certain items, ought to be ascertained per ton, and as to others upon the per ton mile basis?

A. I said I thought, in the case of station and yard service, it would be fairer upon the per ton basis; and in the case of maintenance of buildings, possibly.

Q. So, when you get to the end of it, possibly, like the expression you used in reference to the valuation of the property, if you wanted simplicity the revenue basis would be the simple way—that is, regardless of your judgment as to fairness?

A. I said the gross earnings would be a simple way to distribute the value of the property.

Q. Well, I will say "a simple way;" so far as ascertaining the cost, the gross earnings would be a simple way?

A. No sir.

2226 Q. It would not be a simple way: In the distribution of the total expense of the doing of the business in Missouri, as between state and interstate, would not the simplest way you can conceive to be on the revenue basis?

A. Yes sir, the simplest and the most inaccurate.

Q. I will give you the benefit of your judgment as to the inaccuracy; but so far as simplicity is concerned, that is true?

A. It would be very simple.

Q. So, in the preparation of this Exhibit, in the first line, you get the average cost per ton, according to Form 1940?

A. Yes sir.

Q. And then you get the other items on the basis of tons per mile, from Form 1941?

A. Forms 1940 and 1941.

Q. But when you come to the next to the last column, for the purpose of comparison, you set out the average amount received per ton, as shown by Exhibit 19?

A. Yes sir.

Q. And then you use the haul, as shown by Exhibit 19, for the basis of the second and third columns of figures in each exhibit, where you have doubled or trebled?

A. Yes sir.

Q. The use of the average haul does not enter into the first column, at all, does it?

A. No sir.

Q. Those are just the figures exactly as they appear in Forms 1940 and 1941?

A. Yes sir.

2227 Q. You said something about the Kansas City Terminal expenses: You thought $480,000 of the Kansas City terminal expenses ought to be charged outside of Missouri, leaving only $320,000, if $800,000 represents the total expenses, to be charged to Missouri?

A. Yes sir.

Q. Upon what theory do you base that?

A. Upon three theories.

Q. What are they?

A. First, that of the total tonnage handled at Kansas City, one-third originated or terminated at Kansas City and two-thirds passed through.

Second, that the expense per ton of the tonnage that originated or terminated at Kansas City was three times as much as the expense per ton of the tonnage which passed through——

Q. How do you figure that out in your mind?

A. And third, that of that portion of the expense which was applicable to the business originating or terminating at Kansas City, one-half would apply to Missouri, and one-half to the lines west.

Q. You said there were three reasons you had why you thought that $480,000 of the $800,000 ought to be charged to some other state than Missouri, of this Kansas City Terminal expense.

2228 Your first reason was that two-thirds of the stuff passed through Kansas City, and that only one-third originated or terminated at Kansas City, Missouri: What other reason have you?

A. I don't think I used the word "reason." But the second point was that I was assuming that business which originated or termi-

nated at Kansas City, Missouri, cost three times as much per ton as the business that passed through Kansas City.

Q. Why do you assume that business originating or terminating at Kansas City costs three times as much as that passing through?

A. We think ourselves that is rather too much to charge to the business originating or terminating at Kansas City. But you might say we did that to be liberal.

Q. Let us see how liberal you are. That is, the business which originates or terminates at Kansas City has all the fixed terminal situation to deal with, hasn't it, either the loading and getting of it out, or the getting of it in and unloading of it?

A. It has the loading and unloading, as compared with that which goes through.

2229 Q. And that which goes through has same division expense, because that is a divisional point?

A. Yes sir.

Q. You think the result of the difference would be many times more, and to be liberal you allowed three?

A. I think the expense of the business originating and terminating there would be more than the expense of the business passing through, on the average.

Q. You estimated that at three times, and said that was liberal—but you know we must always beware of those Greeks that bear gifts. Without being liberal, give us your best judgment.

A. My best judgment would be that it would not be three times.

A. How much more or less?

A. Something less than three, and more than two.

Q. It is safe to assume that your honest judgment is that the fixed terminal expense at a terminating or originating point are at least twice those of a shipment going through?

A. Yes sir, I should estimate it at least twice as much.

Mr. LADD:

Q. In your cross-examination you said the longer the distance hauled, the less per ton per mile for the originating terminal expense: And then you were asked this question: "But when you come to tabulate in your memorandum, you allow only 105 miles; and yet the per ton per mile is figured out on the long haul;

2230 and later on the question was asked in this way; "And yet the expenses that might be figured out per ton per mile are not on the basis that 105 miles was the entire length of the haul, but it might have been 205 miles, or 305 miles."

It was suggested, at all events, that perhaps that was not fair. Now why is that fair?

A. Because in the figures submitted by the Company, all of the terminal expense incurred in the State of Missouri, and we think some of those incurred in the State of Kansas, are included in the expenses charged to Missouri. That is, all of the terminal expenses which occurred in Missouri, or which could in any way be directly applicable to the haul in Missouri, are charged to the expenses. Consequently, those expenses are distributed over the haul which occurred in Missouri.

Mr. HAGERMAN:

Q. Wouldn't they be distributed if the freight went beyond Missouri?

Mr. LADD:

Q. For instance, all of the St. Louis terminal expense is charged to Missouri: Is that right?

A. Yes sir.

Q. And that includes the terminal expense connected with state freight, interstate freight, and some interstate freight that may go five hundred miles out of the state: Is that true?

A. Yes sir, it includes all of the expenses of the St. Louis terminal, without regard to the destination or the origin of the freight.

2231 Q. And that is the reason why, instead of charging the terminal expenses which measured by miles of the entire haul, might be much less, you charge it on the basis of 105 miles haul, which is the average haul in Missouri?

A. Yes sir.

Q. Because Missouri has to stand all of the expense any how?

A. Missouri does stand all of the expense in every exhibit put in. Missouri stands every dollar of terminal expense for every pound of freight handled or hauled in Missouri, and in the case of interstate freight the haul in Missouri is 105 miles, and in the case of state freight it is 52 miles, on the average.

Mr. LADD:

Q. Are the figures shown in Exhibit 29 and 30 based on the Company's figures in Exhibits 26 and 27?

A. I think you mean the figures shown in Exhibits 28 and 29.

Q. Perhaps I do.

A. In the first column of Exhibit 28, the cost per ton is shown to be 57.946 cents.

Q. What I ask you now is, are the figures shown in Exhibits 28 and 29 based on the figures shown in Exhibits 26 and 27, the latter being the Analysis of Superintendents' Operations, Forms 1940 and 1941?

A. Yes sir.

Q. So the relative proportion between the cost of state and interstate freight, as shown by Exhibits 28 and 29, would not be changed, would it?

2232 A. No sir. And I might say here that the purpose of these Exhibits 28 and 29 was to show the relative cost of the two classes of freight per ton in the State of Missouri.

Mr. LADD:

Q. I want to call your attention to Exhibits 28 and 29: Your first figure in all three columns of both of these exhibits is 17.92 cents; that is the average cost per ton for station and yard services; where did you get that 17.92?

A. From Exhibit No. 26.

The MASTER:

Q. That is the Superintendents' Operations?

A. It is Form 1941, Analysis of Superintendents' Operations for the year ending June 30, 1906.

Mr. LADD:

Q. That purported, did it, to show the average cost per ton for station and yard service on the entire Missouri Pacific system?

A. Yes sir.

Q. Did those sheets, Forms 1940 or 1941, from which you took that, show the average cost per ton of any of the other items of expense?

A. No sir.

Q. In your statement, Exhibit 28, you are trying to work out a cost per ton based on Forms 1940 and 1941, if you can, are you?

A. Yes sir.

2233 Q. For the other items of expense, in Exhibits 28 and 29, how did you work out the cost per ton? You say, the cost per ton was not worked out on those exhibits, except in the case of station and yard service: How did you work it out?

A. We took the cost per 100 ton miles for the other items of operating expenses, as shown by Form 1941, and reduced that to the average haul of the state and interstate freight in the state of Missouri.

Q. And in that way, you got at the cost per ton, based on the showing in 1940 and 1941, of 100 tons one mile?

A. Yes sir.

Q. You were endeavoring to, and I suppose did follow as far as you could, these forms 1940 and 1941: is that right?

A. Yes sir.

Q. To see where it would lead you: is that right?

A. Yes sir, for the purpose of determining an approximate figure of the cost per ton in the state of Missouri, of the state freight and the interstate freight.

Q. Based on Forms 1940 and 1941.

A. Yes sir.

Q. Now why did you take the 17.92 as the average cost per ton?

A. Because I thought that would be a fairer figure in attempting to determine the cost per ton in the state of Missouri, than it would be to take the cost per ton mile, shown by Form 1941, for station and yard service, inasmuch as I thought the terminal expenses would

2234 be greater in the state of Missouri, in which the two largest terminals of the Missouri Pacific system are located, than it would be on the system as a whole.

Q. When you say "fairer" you mean fairer to whom?

A. It would be nearer correct in determining the cost in Missouri, I thought it would be fairer for the purpose of these statements.

Q. Of this statement, Exhibit 28?

A. Yes sir, and Exhibit 29.

The MASTER:

Q. Then the figures 17.92 cents in the first item of those two Exhibits 28 and 29, are not taken from Form 1940 or 1941, but are deductions made from the figures given in those forms?

A. No sir.

Q. You get those original figures from the form itself?

A. Yes sir, 17.92 cents is the average cost per ton, for station and yard service, on the entire system.

Q. As shown by Form 1940?

A. Yes sir, as shown by Form 1940.

Now, the average cost per 100 ton miles on the system for station and yard service is 7.66 cents, and on the 105 miles hauled that would make this figure something like 80 cents; and although the average haul of the interstate freight in Missouri is only 105 miles, as compared with the average haul of 237 miles for all of the freight on the system, and of course the terminal expense increases with the length of the haul, the more you use them, at the same time, on account of the expensive terminals of the system being located in Missouri, we thought, for the purpose of determining
2235 the cost in Missouri, it would be fairer to take the cost per ton on the whole system than to take the ratio of cost per 100 ton miles on the system as a whole.

Mr. HAGERMAN:

Q. You found that 17.92, and you adopted if for the purpose of this statement: is that it?

A. Yes sir.

Q. I understood you to say that for the purpose of this statement, the purposes you had in mind in the preparation of these statements, Exhibits 28 and 29, that is, to build up a cost per ton based on the figures contained in Forms 1940 and 1941, you thought it would be fairer to take their estimate of the cost per ton for the station and yard service, than to arrive at that in any other way: is that it?

A. Yes sir. That was particularly so, I might explain, because in Missouri the haul of the interstate is 105 miles, and the haul of the state freight is 52 miles, so that that works out about twice as much per ton per mile for the state freight as for the interstate freight, which we believe is about correct.

Q. As a general proposition, independent of your purpose in preparing this statement, and independent of Forms 1940 and 1941, and not attempting to follow them, would you yourself have arrived at the expense of the station and yard service, upon the ton basis, or the ton mile basis?

A. Upon the ton mile basis, for the reason that in my judgment the terminal expenses increase the same as all other items of expense, the more you use them. Therefore, the further the freight goes, the greater the expense would be.

2236 The MASTER:

Q. The average cost per ton for station and yard service, 17.92 cents, is taken bodily from Form 1940, as I understood it?

A. Yes sir.

Q. But the cost for train service in the second item of Exhibit 28, is not taken from that form, but is computed from the figures given as to the 100 ton miles, in Form 1941?

A. Yes sir, reduced to the average haul in the state of Missouri.

Q. And 4.305 cents represents the cost per ton of train service?

A. Yes sir.

Q. That is to say, that figure is derived from your computation reducing the 100 ton miles to tons?

A. To 105 miles, which is the average haul in Missouri.

Q. Does 1940 and 1941 give the train service per ton?

A. They do not. They give no statistics whatever as to cost on the per ton unit, excepting for the station and yard service.

Mr. LADD:

Q. I see that in both of these statements, in each of the three columns of both statements, you carry the 17.92 right through that is right, isn't it?

A. Yes sir.

Q. So far as that affects the expense of the state freight per ton per mile, what is the result of carrying the 17.92 into the cost of the state freight?

A. It is nearly double as much per ton per mile for the state freight as for the interstate freight, for the reason that the
2237 cost per ton being the same, 17.92, it would be twice as much per ton per mile for a haul of 52 miles, the state mileage, as it would be for 105 miles, the interstate mileage.

Q. That is to say, when you apply the 17.92 to the state freight running 52 miles, it means twice as much per ton per mile as when you apply it to the interstate freight running 105 miles: is that it?

A. Yes sir.

Q. So, when you said you thought it was fairer to reach this cost per ton as to the station and yard service, instead of per ton per mile, you mean for the purpose of building up this cost per ton, in following the figures given in Forms 1940 and 1941; is that it?

A. For the purpose of preparing those Exhibits 28 and 29, which were then under discussion.

Q. I want to ask you one more question; it has been gone over, I expect, but I would like to ask you:

You have said that your opinion is that the ton mile basis is more accurate than any other, both for the purpose of ascertaining cost and earnings, in an effort such as we are engaged in in this case, to ascertain the difference between revenue, as well as cost, which exists between state and interstate traffic:

Now, I wish you would state, as briefly as you can, why in your opinion the ton mile basis or method of arriving at a result is more

accurate than any other? And if there are any reasons why the ton mile basis is not as accurate, as the revenue basis?

2238 A. In my judgment, you have to consider two elements: the first is the weight of the freight, and the second is the distance which it travels. All railroad rates are made upon the distance that the freight is going. What I mean by that is, if you go to an agent to ship freight, he does not merely ask you what it weighs, without regard to where it is going, whether from here to San Francisco, or from here to Kansas City. The rate is necessarily based upon the distance which the freight is going, as much as it is upon the weight. It takes the two elements into consideration; first, the weight of the freight; and, second, the distance it is going.

For the purpose of illustration, you might compare it with the passenger legislation just passed in this State and now under consideration. The rate is so much per passenger per mile. It does not stop with the passenger. It would be absurd to pass a law that the railroad should charge only so much per passenger, twenty-five or fifty cents; because the number of passengers is only one element. The distance they are going is another element to be considered.

The ton mile unit takes into consideration both the element of the weight of the freight and the distance it is going; just as the bill passed by the Legislature takes into consideration the distance the passenger is to travel.

Mr. HAGERMAN: It just says so much per mile.

A. Yes sir, exactly what the per ton mile unit does. You cannot conceive of a freight rate being quoted of so much per ton. It is all governed by those two elements.

By Mr. LADD:

2239 Q. When you are trying to ascertain or approximate as nearly as possible under the circumstances, the relative cost of doing state and interstate business, is it, in your opinion, an essential feature to be taken into consideration, the difference between the interstate haul and the state haul?

A. Yes sir, it is one of the most essential elements, and without taking that into consideration, in my judgment, you cannot arrive at any conclusion that means anything.

Q. Would that be true, speaking generally, Mr. Ludlam, of the operating expenses taken as a whole, in order to get an average?

A. To get an average that would mean anything, you would have to reduce it, in my judgment, to the per ton mile unit.

Q. On all the operating expenses?

A. Yes sir.

Q. Do you mean to say—I don't suppose you do—that we reach in that way an accurate result?

A. No sir. I think there are certain elements that enter into the question that makes it impossible to determine the absolute cost of the two classes of freight.

Q. But you do think we reach a result which is more nearly the true situation, in that way, than in any other way; is that it?

A. Yes sir.

2240 Q. Assuming you are wrong about that, and it should be classified as are the taxes, and between state and interstate, passenger and freight, dealing with it as an independent proposition, how would you deal with a situation of that kind—just broadly, now? Would you deal with it upon the basis of percentage of tonnage, or revenue, or ton miles?

A. Do you want my idea of it?

Q. I just want your idea.

A. As to what would be the ideal way?

Q. Yes. What would be the ideal way.

A. I do not think there is any question about the interest on the bonds being apportioned against your net earnings. That was my judgment.

I think your taxes ought to be apportioned on the per ton mile basis.

I should say that your rentals should be apportioned on the per ton mile basis. On the ton miles moving over the rented track.

Q. Now, then, how would you deal with the question of interest in distributing, first as between passenger and freight earnings, and then as between state and interstate?

A. I think interest would be distributed between passenger and freight, in my judgment, on the basis of the net earnings from the freight and passenger business, as near as they could be determined.

2241 Q. Practically, upon a revenue basis?

A. A net revenue basis, not gross revenue.

Q. I presume whether it was net or gross would depend. There would not be any difficulty in the situation, if we agreed upon the basis for arriving at it, because it brings us back to the original controversy we had about the ton mile basis.

A. Yes sir. That is why I asked you if you meant "the ideal way."

Q. Assuming either one of us may be wrong about this, what would you divide between passenger and freight would be upon a revenue basis? That is, giving you credit that your theory may be right, and giving me credit that my theory may be right.

A. I say on a net revenue basis.

Q. What would be the difference between gross and net?

A. The operating expenses.

Q. You would have to distribute them in some way, as between passenger and freight?

A. Yes sir.

Q. And that would be your idea about dividing it?

A. Yes sir.

Q. And would that apply not only as between freight and passenger, but also as between state and interstate portions of each class?

A. Yes sir, talking about the interest.

Q. Yes, the interest.
A. Yes sir.
Q. But the taxes you should deal with and distribute practically as you do the rest of the operating expenses?
A. Yes sir.

2242 Mr. HAGERMAN:

Q. These figures were given to Messrs. Stith's and Roth's testimony, whatever they were: There is no difference between you as to the figures, how it was done?
A. Not as to the approximate change in the figures. But as to the principle and the necessity of their applying to St. Louis the rate that would apply to the Mississippi River figures on the shortest mileage, I would say that was not necessary, except for commercial reasons, whatever they may have been. The Missouri Pacific was the short line to St. Louis, and we find that in Iowa the roads charge less across the state from Council Bluffs to various Mississippi River crossings than the proportional rates amount to that apply on interstate business. And they charge different rates from Council Bluffs to the different Mississippi River Crossings.

Mr. LADD:

Q. On state business?
A. Yes sir.
Q. What does that tend to show in reference to Iowa, as to its effects or want of effect on interstate rates? That is traffic passing across the state to the Mississippi River?
A. To my mind it shows that the interstate rates are not necessarily reduced because the state or local rates are less.
Q. Have you anything else to say on that question of short mileage?
A. The only thing that occurs to me is that we worked up these figures for the year 1905 based on the full mileage, and found that the revenue on the commodities affected by the law of 1905
2243 would have been something like $10,000 more, and the loss in that year would have been decreased to that extent.

Mr. HAGERMAN:

Q. Did not either Mr. Roth or Mr. Stith have figures referring to that, showing a loss of $10,000? Was an Exhibit made of that?
A. Yes sir.

The MASTER: You are controverting the commercial or any other necessity for charging less than the full mileage rates?
A. Yes. sir.

2244 The complainant having offered in this case as Exhibit 27-*b* an exhibit in evidence in the Missouri Pacific Railway Company's case as Exhibit 19*b*, defendant offered in evidence in connection with said exhibit and as supplemental thereto, certain portions of the testimony of F. P. Johnson given in the case of the Missouri Pacific Railway Company as follows:

From the seventh question on page 4693 to the last answer on page 4892*c*, both inclusive.

From the fourth question on page 4740 to the third answer on page 4752, both inclusive.

Said portions of the testimony of F. P. Johnson given in the Missouri Pacific Railway Company's case, and offered in this case, by counsel for complainant and defendants, are as follows: to-wit:

2245 Q. Now turn to Division 3, and see how you ascertain, in Item 1, earnings from state freight, $1,658,527.67?

A. That was taken from Exhibit 5-*b*.

Q. That was conceded to be correct, or at least not the subject of complaint, upon the part of Mr. Ludlam, although in his Exhibit 19 he took in the neighborhood of $100,000 out of state and put it into interstate business, on the ground that it was live stock business from Kansas City?

A. It was $10,423.35 for the month of October, 1905; and assuming that was one-tenth of a year's business, it would be approximately $100,000.

Q. What appeared strange to me was that he made that criticism, and included in Exhibit 19 that excess, and yet conceded our figures to be correct, and wanted to show nothing to the contrary.

Can you explain here how it would show worse for the State if that was included in the interstate earnings?

A. If that had been included in the interstate earnings it would reduce our state earnings that much, and we make that statement.

Q. What would be the difference in favor of the Complainant if you could have that $100,000 put where Mr. Ludlam puts it in Exhibit 19?

A. Assuming the $10,000 difference in the month of October, 1905, was one-tenth of a year's business for live stock, we have deducted from our state earnings $100,000, in round numbers.

Q. You took $100,000, in round numbers, to avoid fractions, and to illustrate the idea?

A. Yes sir. That would leave our earnings from state business $1,558,527.67, instead of $1,658,527.67.

Q. It would change the percentage from 29.27 per cent to 27.50 per cent?

A. Yes sir.

2246 Q. You say Exhibit 19 is not correct because the live stock handled at Kansas City stock yards has been treated in this Exhibit as interstate business?

A. I say it does not agree with your record to that extent as shown by Exhibit 5-*c*.

Q. You say that it does not agree with your records to this extent; That the live stock handled at the Kansas City stock yards is treated in Exhibit 19 as interstate traffic, while in your records you treat it as state traffic?

A. That is one of the reasons.

Q. The other reason is, as I understand you, that it does not

agree with any revenue from business, as shown by Exhibit 5-*c*: Is that right?

A. Yes sir.

Q. Exhibit 5-*c* was taken by Mr. Taliaferro from your books, wasn't it?

A. That is my understanding.

Q. He had it here at the time it was referred to, in pencil, didn't he, these figures?

A. Yes sir.

Q. And at Mr. Hagerman's request, he had it put in typewriting as it appears here, and it was offered in connection with his cross-examination as Exhibit 5-*c*: That is right, isn't it?

A. Yes sir.

Q. And these figures which appear in Exhibit 5-*c*, showing the amount received for state freight and interstate freight, in each month, and the total in each month—those figures were taken, as you understand it, right from your books: They were the result of any compilation, or from figures furnished by your people?

A. As I understand it, they were the abstracts made from our record.

2247 Q. Those identical figures, Mr. Johnson, were the figures prepared by you or some of your people, weren't they?

A. By some of our people.

Q. This purports to be a summary; these are total figures, and these total figures were prepared by your people, and copied off by Mr. Taliaferro: Isn't that right?

A. That is my understanding.

Mr. HAGERMAN: Exhibit 5-*c* is a monthly detail of Exhibit 5-*c*, so far as the earnings are concerned, giving it by months: Isn't that right, Mr. Johnson?

A. Yes sir.

Q. The totals correspond with Exhibit 5-*a*?

A. Yes sir.

Mr. LADD:

Q. You say—I want to be sure that I understand you—that Exhibit 19, so far as you know, may be correct, if it were not for the circumstances: That in that exhibit the business in and out of the Kansas City stockyards had been treated as interstate business, and that the footings for the month of October do not agree with the Exhibit 5-*c*: is that right?

A. Well, the fact that the figures shown in Exhibit 19 do not agree with Exhibit 5-c is one reason why I believe that Exhibit 19 is not correct.

Q. Have you any other reasons?

A. I won't say that that is all of the reasons.

Q. What other reasons have you?

A. I haven't any. There may be others.

Q. I thought you said that so far as you know no one in your

office has gone through these records, within the last three
2248 months, since Exhibit 19 came into your possession, or the way-bills upon which the records are based, to either verify or show the want of accuracy in Exhibit 19, so far as it purports to show the operations of the Missouri Pacific in the freight business in Missouri for the month of October, 1905?

A. Not since Exhibit 19 came into our possession.

Q. There was offered in connection with your testimony last week Exhibit 19-*b*: Will you please turn to it?

A. I have it.

Q. You testified to the correctness of this Exhibit 19-*b* last week, when it was offered in connection with your testimony, didn't you?

A. Yes sir.

Q. In the early part of this Exhibit 19-*b*, you say that Exhibit 5-*c* is a statement of the actual state and interstate earnings, exclusive of switching and demurrage, for each month of the year 1905. This statement is made for the purpose of showing that every figure found in Exhibit 19 for some reason or other must be correct: Now, you show by Exhibit 19-*b* that, according to Exhibit 5-*c*, the total freight earnings in the month of October, in Missouri, were $497,993.76?

A. Yes sir.

Q. Then you say that the total freight earnings in Missouri, for that month, according to Exhibit 19, are $508,542.46, don't you?

A. Yes sir.

Q. From which it appears that the total freight earnings for the month of October, as shown by Exhibit 19, were $10,548.70
2249 greater than those shown by Exhibit 5-*c*: is that it?

A. Yes sir.

Q. You say also that Exhibit 19 shows interstate earnings for that month of $377,704.90, and Exhibit 5-c shows the interstate earnings to be $351,017.74?

A. Yes sir.

Q. Being a difference on the interstate earnings in favor of Exhibit 19 of $26,687.16: is that right?

A. Yes sir.

Q. You also say that Exhibit 19 shows the state earnings for that month to be $130,837.56: and, according to Exhibit 5-c, the state earnings were $146,976.02: leaving a difference in favor of Exhibit 5-c, on the state earnings of $16,138.46: is that right?

A. Yes sir.

Q. Now, Mr. Johnson, Exhibit 19-b shows the interstate earnings larger than Exhibit 5-*c*, doesn't it?

A. Exhibit 19 shows the interstate earnings to be larger than Exhibit 5-c.

Q. In Exhibit 19-b did you call attention to the fact that in Exhibit 19 the business to and from the Kansas City stock yards had been treated as interstate business? Do you say anything about it in Exhibit 19-b, as a partial explanation?

A. No sir, I don't believe we have mentioned that at all in Exhibit 19-*b*.

Q. It is a fact that in Exhibit 5-*c* the business to and from the Kansas City stock yards is treated as state freight, isn't it?

2250 A. Yes sir.

Q. And you do not mention that difference in 19-*b* to account partly for the difference in the figures, do you?

A. No sir.

Q. That had been fully explained by Mr. Taliferro or Mr. Ludlam in their testimony, before you offered this Exhibit 19-*b*?

A. That difference in the method of handling those figures has—Yes sir.

Q. Hadn't it been fully explained by Mr. Ludlam in answer to questions put to him by Mr. Hagerman in cross-examination, that they had treated it as interstate business, and that accounted for that difference, to a certain extent; and that the stock yards business amounted to $10,423.35: I ask you if that had not been fully explained by Mr. Taliaferro?

A. I believe it had.

Q. But you did not refer to it in Exhibit 19-*b*?

A. No sir.

Q. Mr. Johnson, suppose you deducted the $10,423.35, revenue from the live stock business, from the $377,704.90, being the total interstate revenue shown in Exhibit 19, would not the result be $367,281.55?

A. (After calculating.) Yes sir.

Q. The figures in Exhibit 5-*c* for the interstate earnings in the month of October are $351,017.74, aren't they?

A. Yes sir.

Q. Now, the difference between $351,017.74 and $367,281.55 is $16,263.81, isn't it?

A. Yes sir.

2251 Q. That is a difference that is still left, isn't it?

A. Yes sir.

Q. I will ask you now if you did not hear Mr. Ludlam and Mr. Taliaferro testify that in the preparation of this Exhibit 19, and in the showing of the revenue from interstate freight, nothing had been deducted for bridge toll, transfer charges and claims, because it would take so much time they couldn't possibly do it, and, therefore, this revenue included those things?

A. Yes sir.

Q. Did you say anything about this in this Exhibit 19-*b*?

A. No sir, I have not mentioned that at all in this exhibit.

Q. Now, I will ask you if the bridge tolls, transfers and claims which are included in the gross revenue from the interstate business, and which are not included in the revenue from interstate freight, as shown in Exhibit 5-*c*, would not amount to substantially that sum of $16,263.81?

A. I haven't any idea what that amounts to.

Q. If the actual amount—we cannot tell exactly what it was—but if the actual amount of the bridge tolls, transfers and claims, which are included in this gross amount, as shown in Exhibit 19, were taken out of that, do you think there would be any substantial difference between the figures of the two exhibits?

A. I would not like to answer that question with any degree of accuracy, because I would not be in a position to say; but it
2252 does not look to me as if it would amount to as much as that.

Q. You say you have no idea how much the bridge tolls would amount to, on the average, per month?

A. No sir, I would not like to say, off-hand.

Q. Have you asked Mr. Roth?

A. No sir, I have not asked him.

Q. Would he know?

A. It is just possible, since he made that deduction from the original statement 5-*a*, it may be that he would understand and know.

Q. The state earnings as shown on Exhibit 19 for October are -130,837.56: that is right, isn't it?

A. Yes sir.

Q. If you add to that the stock yards earnings $10,423.35, and if you take it away from the interstate earnings it must be added to the state earnings, you have a total of $141,260.91?

A. Yes sir.

Q. *How*, what is the difference between that and the revenue shown in Exhibit 5-*c*?

A. $5,715.11.

Q. Do you regard that as a large variance?

A. That would make a difference of about four per cent on the month of October.

Q. Mr. Johnson, is it possible that the figures compiled and the examinations made by the State's experts were more careful, and more accurate even, than those of your own force, and that their figures may be right and yours wrong?

2253 A. That is hardly possible, because our figures were considered right, as I understand it, and so testified to by the State's experts, with the exception of this live stock business, which appears to be a matter of opinion.

Q. But you have not undertaken to go through these records and way-bills, the way the State's experts did, and take each shipment, shipment by shipment, getting the exact amount which was received on each shipment, adding them together, and in that way getting the total revenue, have you?

A. We did that for the entire two years.

Q. But you have not undertaken to do it since, have you?

A. No sir, not to my knowledge.

Q. Mr. Johnson, do you know how your people treated business which originated in the State and while on its way to another point in the state went out of the state? In compiling the earnings did they treat that as state or interstate business?

A. My understanding is that all such shipments as that were treated as interstate business.

Q. That is your understanding?

A. Yes sir.

Q. That was always done?

A. That was done for the purposes of this suit, yes sir, in compiling the figures for this suit. We have had no occasion to compile figures as between state and interstate business, with this exception.

Q. The two matters which you have referred to, in which you say Exhibit 19 is inaccurate, if it is inaccurate at all, were fully
2254 explained by Mr. Ludlam, weren't they?

A. Those two items which you mentioned, and which I mentioned, were fully explained by Mr. Ludlam—or one of the witnesses for the State. But I do not say those were the only two reasons why Exhibit 19 was inaccurate.

Q. What other reason is there?

A. The fact that the earnings, both state and interstate, in Exhibit 19 do not agree with Exhibit 5-*c*, is evidence that one or the other is incorrect.

Q. That is all. The two reasons which you have given, and the further reason that the figures do not agree with those on Exhibit 5-*c*: is that it? Those are the only reasons you have?

A. Those are the reasons we have—yes.

Q. Mr. Johnson, if the items of bridge tolls, transfer charges, claims, and similar items made by the Company, had been deducted from the interstate earnings by Exhibit 19, the revenue per ton per mile realized from the interstate business would have been less than that shown by that exhibit, wouldn't it?

A. I don't understand that question.

Q. If the items of bridge tolls, transfer charges, and similar items paid by the Company, which in Exhibit 19 have not been deducted from the interstate earnings, had been deducted from those earnings, the revenue per ton per mile on the interstate earnings would have been less than that shown by Exhibit 19, wouldn't it?

A. The revenue per ton per mile would have been less—yes.

2255 Q. If the live stock business had been treated as state business instead of interstate, the revenue per ton per mile on the interstate business would have been still less, wouldn't it?

A. Yes sir.

Q. Will you please look at paragraph "*d*" of Exhibit 19-*b* offered by you, and also at paragraph "*e*," everything contained in those two paragraphs, all the statements of those two paragraphs "*d*" and "*e*" are simply the result of these discrepancies and differences which you have already mentioned, aren't they?

A. They are the result of the difference between the two statements—yes sir.

Q. Which you have already mentioned?

A. Some of which we have called attention to.

Q. What has not been called attention to.

A. I would like to make myself clear there——

Q. Very well.

A. Those are two items that may not necessarily make Exhibit 19 wrong, as compared with Exhibit 5-*c*. There may be clerical errors to make additional mistakes.

Q. In either of them?

A. Yes sir, in either of them. But the fact is, Exhibit 5-*c* has been testified to here as being correct, by the State witnesses, as I understand it.

Q. I don't understand any such thing.

A. They have gone over those figures and verified them, and the statement was made that those figures were compiled, ad
2256 carefully as they could have been compiled.

A. I don't understand any such thing.

Mr. HAGERMAN: That is our idea of it.

A. That was my idea, in calling attention to the inaccuracy of the two statements. The live stock from the Kansas City stock yards is one item that would cause an error in the two statements; and if there is any great amount of bridge tolls not deducted in Exhibit 19, and deducted in Exhibit 5-*c*, that would cause another difference. There may be clerical errors in Exhibit 19 that would cause another difference.

Q. All the statements in paragraphs "*d*" and "*e*" follow naturally from those differences, don't they, that you have already mentioned?

A. Yes sir.

Q. You say in paragraph "*c*" Exhibit 19 as a whole is, therefore, $10,548.70 more than was actually earned, as shown by Exhibit 5-*c*, for the month of October, 1905. These interstate earnings, as shown by Exhibit 19, exceed those actually made, as shown by Exhibit 19, $26,687.16 for the month. The state earnings for the month, as shown by Exhibit 19, are $16,138.46 more than the actual earnings for the month:" When you prepared this, I would like to ask you, Mr. Johnson, if you did not know what the obvious explanation was of a very large proportion of those differences?

A. Why, certainly, we knew that those differences that have been mentioned here would cause such a difference as that in the two statements, at the time this Exhibit 19-*b* was prepared.

2257 Q. Will you please take Exhibit 19-*b*, Exhibit 5-*c* and Exhibit 19: Mr. Johnson was asked yesterday about bridge tolls, and stated that they were not included in the revenue from interstate freight for the month of October, 1905, as shown by Exhibit 5-*c*?

A. No sir, they were deducted from those figures.

Q. What is meant by "bridge tolls," in that connection?

A. Those are the charges paid by us for transferring across various bridges. For instance, at Memphis, St. Louis and St. Joe.

Q. I speak particularly now about Missouri: I want to leave out Memphis.

In this case, what is meant by "bridge tolls?"

A. That is what I am telling you. It is the amounts we have paid out to the bridges I have mentioned.

Q. On Missouri freight?

A. On Missouri freight.

A. Coming from the east, or going out, over those bridges?

A. Or going to St. Joe, Missouri.

Q. What would those amount to, in the month of October, 1905?

A. I could not tell you the exact amount.

Q. You have not figured it out?

A. No sir.

A. Can you make an estimate?

A. I should say about $20,000; probably a little less than that. I would not think it was quite that much.

Q. What would be the amount of bridge tolls, if you can make an estimate, which was deducted from Exhibit 5-*c*, as shown by Exhibit 5-*c*, and which were not deducted by your experts in their preparation of the work of October, 1905, as you understand that work was done?

2258 A. You mean bridge tolls only, or all deductions?

Q. Bridge tolls only?

A. The bridge tolls I should think amounted to about eleven or twelve thousand dollars.

Q. Is that the east-bound business only?

A. Practically all. Well, there is some business moving west of our lines.

Q. What I want to ask is, would your estimate of $12,000 include the bridge tolls on the west-bound business?

A. That is mostly deducted from the way-bills themselves that shows on the face of the way-bills.

Q. Where it was not deducted, is it included? It is not always deducted, is it?

A. No sir, including that, it would be probably about $4,000.

Mr. HAGERMAN: You say here "bridge tolls $20,000;" and then in another place "bridge tolls, $12,000."

Mr. LADD: He takes in some we do not.

The WITNESS: Memphis and St. Joe.

Mr. HAGERMAN:

Q. Does it pertain to Missouri business?

A. Yes sir. Mr. Ladd asked me what all the bridge tolls were, and I said about $20,000. Then he asked me what were the bridge tolls that were deducted separately. There is a certain amount that is shown on the face of the way-bills, and a certain amount that is not. Most of the westbound freight over the St. Joe bridge is deducted on the face of the way-bills, and the east bound freight is not. And also the westbound freight beyond our own lines is not.

Mr. LADD:

Q. There is about $14,000 which the State's experts did not deduct, which has been deducted in the October showing, as appears by Exhibit 5-*c*: That is right?

2259 A. On account of that particular item. There was a whole lot that was deducted. That was by no means the only deduction.

Mr. LADD: I am speaking particularly about bridge tolls, because they say they did not deduct bridge tolls.

2260 Q. In dealing with Exhibits 5-*c*, 19 and 19-*a*, Counsel stopped with bridge tolls: You estimated that there was something like $14,000 of bridge tolls which the State's experts did not deduct in their Exhibit 19?

A. In round numbers, yes.

Q. Was there any difficulty in the way, if they had wanted to make the deduction, to their doing that?

A. I don't think so.

Q. Counsel stopped with bridge tolls, although yesterday there was included in connection therewith some other items. I do not understand what connection they have with it, but the item was "Bridge tolls, transfers and claims:" Are transfers and claims something in addition to bridge tolls?

A. Claims are.

Q. What are "transfers"?

A. The same thing as bridge tolls.

Q. What are "claims"? That is to say, Mr. Johnson, was asked, and the assumption was made, that Mr. Ludlam deducted nothing for claims: what does that mean, in making up Exhibit 19?

A. Those claims are chiefly corrections made subsequent to settlement with the agent, for any bill. There may be an error in weight, or an error in rate, and if the correction is made after we have settled with the agent, there is a general entry made for
2261 that, and he is charged or credited with the difference.

Q. I don't care about the details of it. I am simply asking that because the question was put to Mr. Johnson—and I will show you in a minute what I am trying to get at—and his language was, "Mr. Ludlam said he deducted nothing for bridge tolls, transfers and claims:" Your answer to it was "Bridge tolls:" now would there be anything in addition for the other two things?

A. Yes sir.

Q. How much, in round numbers?

A. As near as I can estimate it, it would be about $15,000. The whole deductions for the month of October should be about $29,000.

Mr. HAGERMAN: Mr. Ludlam, if the thing you did not deduct was simply "Bridge tolls," and that was $14,000, that is what I want. If there was something else you did not deduct, let us have the whole thing.

Mr. LUDLAM: How much did Mr. Roth deduct?

Mr. ROTH: $29,000 for all the things combined.

Mr. LUDLAM: Will you mind asking him, Mr. Hagerman——

Mr. HAGERMAN: If you two can agree about it, that is all I want to get. You may ask him yourself.

NOTE.—At this point Mr. Ludlam and Mr. Roth examine papers.

Mr. HAGERMAN:

Q. Mr. Roth, can you and Mr. Ludlam check up to estimate whether the total thing is $14,000, $17,000 or $29,000? I don't care what it is, so we know what they did not deduct.

2262 A. When these experts checked it, they had those deductions detailed on our sheets, and all they had to do was to take off the details, and they would have the amount. I cannot recollect what they were.

Q. You think they aggregate $29,000?

A. I think so.

Mr. HAGERMAN: Mr. Ludlam, what do you think it aggregates?

Mr. LUDLAM: I haven't made any estimate on it.

Q. Can Mr. Taliaferro give the answer?

Mr. TALIAFERRO: Mr. Roth's figure includes certain bridge tolls that were deducted in making up our statement.

Q. That may account for it. What is the total amount that you did not deduct, is what I want to get at, in addition to the $14,000 for the bridge tolls?

Mr. TALIAFERRO: Very roughly, $16,000 to $18,000 is my idea.

Q. For everything?

Mr. TALIAFERRO: Yes sir.

Q. Including bridge tolls?

Mr. TALIAFERRO: Yes sir.

Mr. LADD: He is trying to get at how much in addition to bridge tolls you did not deduct, which they included. Mr. Roth says about $14,000 bridge tolls: How much in addition to that did you deduct?

Mr. TALIAFERRO: My idea would be $3,000 or $4,000.

Mr. HAGERMAN: That is near enough for the Court to get the idea. It is not important enough to follow it up.

2263 *Testimony for Defendants in Rebuttal.*

A. C. TALIAFERRO, recalled, testified as follows, in sur-rebuttal:

Direct examination.

By Mr. S. B. LADD:

Q. Have you examined plaintiffs' Exhibit 16-a, Mr. Taliaferro, which was offered yesterday?

A. Yes sir, as fully as I could during the time at my disposal.

Q. Have you prepared some comments upon it, in writing?

A. Yes sir.

Q. Is this it which I am going to introduce now as Exhibit 43?

A. Yes sir.

Mr. LADD: I will offer in evidence this paper as Exhibit 43.

Defendants' Exhibit 43 is in the words and figures following to-wit:

2264 Mr. LADD:

Q. Have you also examined plaintiffs' Exhibit 17-a and prepared some comments upon it?

A. Yes sir.

Q. Are these your comments contained in the paper which I will offer in evidence as Exhibit 44?

A. Yes sir.

Mr. LADD: I will offer in evidence this paper as Defendants' Exhibit 44.

Defendants' Exhibit 44 is in the words and figures following to-wit:

2265 Q. Have you also examined plaintiffs' Exhibit 19-a introduced yesterday?
A. Yes sir.
Q. And prepared some comments upon it?
A. Yes sir.
Q. As shown in the paper I will offer as Exhibit 45?
A. Yes sir.

Mr. LADD: I will offer in evidence this paper as Defendants' Exhibit 45.

Defendants' Exhibit 45 is in the words and figures following to-wit:

2266 Mr. LADD:

Q. Have you also examined plaintiffs' Exhibit 25-a introduced yesterday?
A. Yes sir.
Q. And are your comments upon that shown in the paper I will offer as Exhibit 46?
A. Yes sir.

Mr. LADD: I will offer in evidence this paper as Defendants' Exhibit 56.

Defendants' Exhibit 46 is in the words and figures following to-wit:

2267 Mr. LADD:

Q. Have you also examined the plaintiffs' Exhibit 27-a introduced in evidence yesterday?
A. Yes sir.
Q. And prepared some comments upon it?
A. Yes sir.
Q. As contained in paper I will mark as Exhibit 47?
A. Yes sir.

Mr. LADD: I will offer in evidence this statement as Defendants' Exhibit 47.

Defendants' Exhibit 47 is in the words and figures following to-wit:

2268 Mr. LADD:

Q. Have you also examined Complainants' Exhibit 36-a introduced yesterday?
A. Yes sir.
Q. And prepared comments upon it?
A. Yes sir.
Q. As contained in paper I will offer as Defendants' Exhibit 48?
A. Yes sir.

Mr. LADD: I will offer in evidence this statement as Defendants' Exhibit 48.

Defendants' Exhibit 48 is in the words and figures following to-wit:

2269 Mr. LADD:

Q. Have you examined Complainants' Exhibit 41 introduced yesterday?

A. Yes sir.

Q. And prepared comments upon it?

A. Yes sir.

Q. As contained in Exhibit 49?

A. Yes sir.

Mr. LADD: I will offer in evidence this statement as Exhibit 49.

Defendants' Exhibit 49 is in the words and figures following to-wit:

2270 Cross-examination.

By Mr. FRANK HAGERMAN:

Q. Do I understand you now that you abandon Exhibit 16?

A. Exhibit 16 was only a partial showing.

Q. What I am trying to get is, we made a statement up in reference to that because they were in the records. But you did not use Exhibit 16, it being a partial showing, with only certain places, and you did not use that in the Missouri Pacific: Have you or do you intend to abandon it in this case?

A. I do not think that would be for me to answer. I would not abandon it, of course, because it is in there and has served its purpose.

Mr. LADD: Exhibit 16 is a partial showing and was superseded by Exhibit 27, which is a complete showing for the month.

Mr. HAGERMAN: I am still asking if you are still relying on it?

Mr. LADD: We rely on the full showing. The other would not have been put in at all if we had had a complete showing at the time.

Mr. HAGERMAN: You still keep it in?

Mr. LADD: I don't know how we are going to get it out, but the complete showing is more satisfactory in every way than a partial showing.

The MASTER: As I understand, of course as a matter of fact it is in the record and cannot be expunged, but you simply say that Exhibit 27 supersedes Exhibit 16?

2271 General HADLEY: Yes. Exhibit 16 was correct as far as it went but it does not show as much as Exhibit 27.

Mr. HAGERMAN:

Q. You did not use Exhibit 16 or any of the figures on Exhibit 16 in the Missouri Pacific case?

A. The Missouri Pacific case, no sir, because we had the complete Missouri Pacific figures when we got to that case.

Q. You did not use Exhibit 17 or 18 or any of the figures therein, when you got to the Missouri Pacific case?

A. No sir.

Q. I observe that you say Exhibit- 17 and 18 undoubtedly served their purpose in the Burlington case and we now can afford to abandon them: As a matter of fact, no Exhibit appeared upon the basis of either Exhibits 17 or 18 was used in the Missouri Pacific case?

A. No sir. We followed in the Missouri Pacific case what we did subsequent to these figures, in the Burlington case. That is, we adopted in the Burlington case subject to the handling in the Missouri Pacific.

Q. I observe here that as to Exhibits 17 and 18, you say you can now afford to abandon them: What I want to bring out, if it is true, that either Exhibit 17 or 18, which were based on only a part of the road for the month of October 1905, were ever used in the Missouri Pacific case?

A. That is true?

Q. Nor were any figures along the same line ever prepared after Exhibit 19 was prepared as applicable to the Missouri Pacific case?

A. No sir.

2272 Q. Nothing along the line of Exhibit 17 or Exhibit 18 at any time was ever used in the Missouri Pacific case?

A. That is right.

Q. It is true that Exhibits 25 and 26 referring to your Exhibit 46, are based entirely on the figures given in Exhibit 16, isn't it?

A. Yes sir.

Q. No such figures as those were used in the Missouri Pacific case?

A. No sir.

Q. I notice that Exhibit 49 is made up—you did not write that, did you?

A. Yes sir.

Q. All of it, yourself?

A. Yes sir.

Q. Didn't the lawyers have anything to do with it?

A. No sir. I had to write it very hurriedly. I am not proud of the language but such as it is, I wrote it.

Q. As to any of these Exhibits, did the lawyers do any of the work on them at all?

A. No sir.

Q. Every bit of the work has been done by you, yourself?

A. Yes sir.

2273 T. A. HAMILTON, recalled, testified as follows in surrebuttal:

Direct examination.

By Mr. S. B. LADD:

Q. It already appears from your testimony that you were at Chicago when the examination of the September way-bills of the Burlington Railroad was going on?

A. Yes sir.

Q. You mentioned the name of Whitcomb?
A. Yes sir.
Q. How did you come into contact with Mr. Whitcomb?
A. Mr. Sturgis turned me over to Mr. Larmar who was the assistant auditor in Mr. Sturgis's office. Mr. Larmar in turn, turned me over to Mr. Whitcomb who was his chief clerk in charge of the work.
Q. During the progress of the work of getting up of this statement, whom did you deal with all the time, Mr. Sturgis or Mr. Larmar or Mr. Whitcomb?
A. With Mr. Whitcomb. Mr. Larmar occasionally enquired into the progress the work was making, in a general way, and so did Mr. Sturgis. But Mr. Whitcomb was the only one who exercised direct supervision of it, and all of the details of it were under his charge, so far as the Burlington railroad was concerned.
Q. From the first?
A. Yes sir.

2274 A. C. TALIAFERRO, recalled, testified in sur-rebuttal, as follows:

Direct examination.

By Mr. HADLEY:

Q. In Exhibit 48, Mr. Taliaferro, you expressed certain comments upon Exhibit 36-a?
A. Yes sir.
Q. You heard Mr. Hagerman make the statement here yesterday that by reason of the fact that the handling of livestock shipments at Kansas City was only a switching proposition, it should all be treated as state business, did you?
A. Yes sir.
Q. You say here in Exhibit 48, "We would have preferred to treat it (referring to the Kansas City livestock business) as state business, as it would, undoubtedly, have tended to increase the revenue per ton per mile on state business, and to decrease it on interstate business, but as we were informed that the unloading pens were in Kansas, and as we thought we had a sufficient agreement with the Burlington Railway Company in regard to the matter, we put the livestock going into Kansas City into the interstate business."
Please explain why in your opinion it would have tended to increase the revenue per ton per mile on state business, if you had treated all that livestock business as state freight business, as Mr. Hagerman contended it should be treated?
A. Of course that amount applies to the September showing, and entirely to revenue per ton per mile on business done in
2275 that month.
I made that statement because in the Missouri Pacific case, where we had the earnings on the livestock business into and out of Kanass City we found that to call it state business increased

the revenue per ton per mile on the state business and decreased slightly the revenue per ton per mile on the interstate business.

The reason for that is, that while the livestock may not earn any more per car—I say may not—I mean that while the car rates might be no higher than a car of wheat or some other commodity, the light loading gives a very high revenue per ton per mile.

Q. And you found in the Missouri Pacific case that when you treated the live stock business of Kansas City as state freight it made a higher rate per mile, or revenue per ton per mile, than when you treated it as interstate freight business?

A. Yes s.r.

Q. And that in this case it shows an increase?

A. On the showing for the month, the showing per ton per mile was increased.

Mr. HAGERMAN:

Q. That is, for the whole month?

A. Yes sir.

General HADLEY:

Q. Independent of the showing in the Missouri Pacific case, you think for the reason given that it would be more advantageous to the State, to treat it in that way?

2276 A. Yes sir.

The MASTER:

Q. How did the number of carloads of livestock compare for the month examined, one being October 1905 and the other September 1906, I think?

A. Yes sir. But I have not any information on that subject. The figures were not kept separate at all for the month, and we have not the number of cars that the Missouri Pacific Railway hauled.

The Defendants here rest in sur-rebuttal.

The evidence is closed.